EN BANC

[G.R. No. 256700. April 25, 2023]

PEOPLE OF THE PHILIPPINES, *PETITIONER*, VS. JOMERITO S. SOLIMAN, *RESPONDENT*.

D E C I S I O N

KHO, JR., J.:

This Court resolves the Petition for Review on *Certiorari*[1] filed by petitioner People of the Philippines (petitioner), assailing the Decision[2] dated October 30, 2020 and the Resolution[3] dated May 31, 2021 of the Court of Appeals (CA) in CA-G.R. SP No. 162948, which affirmed the Decision[4] dated August 23, 2019 of the Regional Trial Court of Quezon City, Branch 90 (RTC) in Criminal Case No. R-QZN-18-13974-CR, convicting respondent Jomerito S. Soliman (Soliman) of the crime of Libel committed through a computer system and other similar means, or Online Libel, as defined and penalized under Section 4(c) (4)[5] of Republic Act No. (RA) 10175,[6] and sentencing Soliman to pay a fine in the amount of P50,000.00.

The Facts

This case originated from an Information[7] filed before the RTC, charging Soliman with Online Libel, the accusatory portion of which reads:

> That on or about the 23rd day of January, 2018, in Quezon City, Philippines, the above-named accused, with evident purpose of impeaching the virtue, integrity[,] and reputation of WALDO R. CARPIO, with malicious intent of exposing him to public hatred, contempt and ridicule, did then and there willfully, unlawfully, feloniously[,] and maliciously exhibit and circulate and/or cause to be exhibited and circulated by, through and with the use of information and communication technology, the following remarks/comments which he posted in his account on "Facebook", to wit:
>
> x x x x

"Jo Soliman
4 hrs.

MINSAN NA KAMING TINARANTADO AT GINAGO, HINDI NA MAUULIT.

Sabi ko na eh pag ako nagtrabaho mabilis!!! Buo na ang puzzle.

Putang ina mo kahit Carpio ka pa patanggal kita kay PRRD!!! *Ipadyaryo nyo ako na* smuggler? *Tapos* SPS (sanitary and phytosanitary clearance) *ko IKAW pala nagiipit???? Tapos sabihin ninyo wag ako bigyan ng* MAV? *Tapos ngayon pikon na pikon ako sa pagmumukha mo susumbong ka sa kuya mo? Pa dyaryo ka pa araw arawin mo!!!! Ngayon ko nalaman ikaw pala may hawak ng* releasing *sa* Bureau of Plant Industry!!!! *Galing mo!!! Sabi diba HUWAG AKO!!!*

Bakit iniipit ni Waldo papel mo? Huhu? Sino Waldo? SPS. *Eh diba sa* ONIONS *lang* SPS *hawak niya? Hindi pati sa BIGAS!!!*

Inipit mo kahit alam mo deadline of arrival is February 28, 2018!!! Application was submitted to your office January 9, 2018, you released it January 22, 2018 after your attention it was called by Secretary. You are definitely NOT following the 3-day release of documents mandate of our President.

So since *inipit mo papel naming delay ang* shipment, since delay *ang* shipment, *BIDA ang* backdoor activities *mo!*

Bakit nakapasok as ASEC *yan sa* Department of Agriculture-Philippines?

So sino ngayon ang financer *ng* TROLL???

Cc: Pres. Rody Duterte
Sec. Manny Piñol

SAP Christopher Bong Go
We are Collective
Ramon Gerardo San Luis
JP Montel Fajura
Pure Force-Media
Pure Force Dispatcher"

x x x x

and other words of similar import, the said accused intended to convey in his Facebook account false and malicious imputations against said complainant to the effect that the latter takes favors and unduly delays the release of the accused's Sanitary and Phytosanitary Import clearance (SPS Permit), as the said accused well-knew were entirely false and malicious, in fact and therefore highly libelous offense and derogatory and were made for no other purpose than to impeach and besmirch the good name, integrity, credibility and reputation of said complainant as in fact the latter was exposed to dishonor, discredit, public hatred, contempt and ridicule, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[8]

After trial on the merits ensued, the RTC promulgated a Decision[9] dated August 23, 2019, finding Soliman guilty as follows:

WHEREFORE, premises considered, accused Jomerito S. Soliman is found **GUILTY** beyond reasonable doubt of On-line Libel under Section 4 (c) (4) of Republic Act No. 10175 and a fine in the amount of Php50,000.00 is hereby imposed with subsidiary imprisonment in case of non-payment of the fine.[10]

In imposing the penalty of fine ***only***, the RTC invoked Administrative Circular No. (AC) 08-2008,[11] or the "*Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*," as well as prevailing case law on libel which allows, under the circumstances specified therein, for the imposition of fine only rather than imprisonment.

The RTC opined that while AC 08-2008 does not remove imprisonment as a penalty for libel, judges may, taking into consideration the peculiar circumstances of each case and in the exercise of sound discretion, determine whether the imposition of a fine alone would best serve the interests of justice.[12]

Soliman no longer appealed his conviction and paid the fine imposed on him.[13] On the other hand, petitioner filed a Petition for *Certiorari*[14] with the CA, contending that the RTC committed grave abuse of discretion in imposing a penalty of fine only for violation of Online Libel. Citing Section 6 of RA 10175, petitioner argued that when crimes punishable under the Revised Penal Code (RPC), such as libel, are committed with the use of information and communication technologies, the penalty shall be one (1) degree higher than that provided in the RPC. Thus, petitioner argued that the RTC should have imposed the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period instead of a fine only.[15]

In his Comment,[16] Soliman argued that: (1) in seeking a higher penalty, the petition for *certiorari* violated his right against double jeopardy; (2) a special civil action for *certiorari* is an improper remedy to question the RTC's decision, which had already attained finality; (3) the acting presiding judge of the RTC did not act in an arbitrary or whimsical manner in issuing the decision; and (4) under applicable laws, the RTC is given the discretion to impose the penalty of imprisonment or a fine.[17]

The CA Ruling

In a Decision[18] dated October 30, 2020, the CA denied due course to the *certiorari* petition.[19] It found no grave abuse of discretion on the part of the RTC, stating that if ever the penalty imposed is erroneous, the error is one of judgment and not of jurisdiction. It also held that the laws on libel and online libel do not remove the discretion of courts to impose the penalty of imprisonment or a fine, and that even the Implementing Rules and Regulations[20] (IRR) of RA 10175 states that the penalty for online libel is *prision correccional* in its maximum period to *prision mayor* in its minimum period ***or a fine*** ranging from P6,000.00 up to the maximum amount determined by the Court, or both. Finally, the CA held that the *certiorari* petition impinged on Soliman's right against double jeopardy, especially considering that the latter did not lodge an appeal from the RTC decision.[21]

Petitioner moved for reconsideration,[22] which was denied by the CA in a Resolution[23] dated

May 31, 2021. Hence, this petition,[24] where petitioner argues that: (1) a special civil action for *certiorari* is the proper remedy to assail a court's imposition of the wrong penalty; (2) the *certiorari* petition does not violate the right of the accused against double jeopardy; and (3) the RTC gravely abused its discretion when it imposed a penalty of a fine only and not a penalty higher by one degree than that imposed by the RPC, in accordance with Section 6 of RA 10175.[25]

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly ruled that the RTC did not gravely abused its discretion when it imposed the penalty of fine only on Soliman for his conviction for Online Libel.

The Court's Ruling

The petition is not meritorious.

At the outset, it must be emphasized that what petitioner sought to assail in its *certiorari* petition before the CA is the penalty imposed by the RTC. Thus, the Court's review is limited to the question of whether the CA was correct in ruling that the RTC committed no grave abuse of discretion in imposing the penalty of fine in the amount of P50,000.00 ***only***, *instead of* imprisonment higher by one degree, as allegedly mandated by Section 6 of RA 10175.

On the right against double jeopardy.

In *People v. Celorio*, (*Celorio*),[26] the Court, through Associate Justice Rosmari D. Carandang, held that an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy.[27] However, the Court also explained in *Celorio* that a special civil action for *certiorari*, ascribing as it does grave abuse of discretion on the part of a tribunal in imposing the erroneous or invalid penalty, does not place the accused in double jeopardy.

For double jeopardy to apply, the judgment in the first jeopardy must have been issued by a court of competent jurisdiction,[28] the very issue in a *certiorari* petition, which seeks to correct errors of jurisdiction. When the writ is issued, the court is "vacated of its jurisdiction" and "its judgment takes no effect."[29] Thus, there is no double jeopardy if the court handing down the sentence in the first jeopardy is ousted of its jurisdiction. Conversely, if it is ultimately found that there was no grave abuse of discretion on the part

of the court in the first jeopardy and the court is not vacated of its jurisdiction, then a writ of *certiorari* may not be issued and the penalty may not be increased since it violates the right of the accused against double jeopardy.

As will be explained further, the Court finds no grave abuse of discretion amounting to lack of jurisdiction on the part of the RTC in imposing the penalty of fine against Soliman for the crime of Online Libel. Hence, to modify or increase such valid penalty would place him in double jeopardy.

Fine as an alternative penalty for Online Libel

Substantively, the petition raises a novel issue, more particularly, whether a court may sentence an accused found guilty beyond reasonable doubt of the crime of Online Libel, as defined and penalized under Section 4(c) (4) of RA 10175 ***to the payment of a fine only***.

In this regard, petitioner argues that Section 6 of RA 10175 mandates the imposition of a penalty one (1) degree higher than that provided in the RPC for crimes punishable under the Code when committed with the use of information and communication technologies. To petitioner, this means that the penalty of imprisonment must necessarily be imposed when the felony is committed with the use of such technologies. Finally, petitioner also assailed the RTC's invocation of the AC 08-2008 in imposing the penalty of fine, arguing that the Circular cannot apply to on line libel as RA 10175 was enacted later. Further, petitioner asserts that even assuming that the Circular is applicable, the circumstances in the present case do not fall under any of the circumstances mentioned therein.[30]

A closer look at petitioner's arguments clearly shows that its reason for assailing the penalty imposed is focused on the fact that only a fine was imposed. It claims that Section 6 of RA 10175 mandates the imposition of imprisonment. Section 6 provides:

> SEC. 6. All crimes defined and penalized by the Revised Penal Code, as amended, and special laws, if committed by, through and with the use of information and communications technologies shall be covered by the relevant provisions of this Act: *Provided*, That the penalty to be imposed shall be one (1) degree higher than that provided for by the Revised Penal Code, as amended, and special laws, as the case may be.

Thus, for purposes of determining the correct penalty for online libel, Section 6 instructs that the commission of the crime through information and communication technologies **shall be one degree higher** than that provided for the crime of Libel punished under the RPC. These articles on libel provide:

> ART. 353. *Definition of libel*. – A libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory or one who is dead.
>
> ART. 355. *Libel means by writings or similar means*. – A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, **shall be punished by *prision correccional* in its minimum and medium periods or a fine ranging from Forty thousand pesos (P40,000) to One million two hundred thousand pesos (P1,200,000), or both**, in addition to the civil action which may be brought by the offended party. (As amended by Section 91 of RA 10951;[31] emphasis and underscoring supplied)

Relevantly, the RPC recognizes that the penalty of fine may be imposed **as a single or alternative penalty**,[32] which means it can be imposed *in lieu* of imprisonment, as obviously shown by the fact that the RPC provides for the alternative penalty of fine in many of its provisions.[33] Specifically on libel, **the penalty of fine may also be imposed in the alternative**, which is evident in the RPC's plain use of the disjunctive word "or" between the term of imprisonment and fine, such word signaling disassociation or independence between the two words.[34]

Petitioner appears to conclude that Section 6 mandates imprisonment as a penalty for Online Libel because it provides that the penalty shall be "one degree higher than that provided in the [RPC]." Thus, petitioner **erroneously assumes** that only imprisonment may be increased or decreased by degrees under the RPC. Verily, petitioner's argument is belied by Article 75 of the RPC which provides:

> **Art. 75.** *Increasing or reducing the penalty of fine by one or more degrees*. – Whenever it may be necessary to increase or reduce the penalty of fine by one or

> more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without however, changing the minimum.
>
> The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional. (Underscoring supplied)

From this, the Court finds that there is no legal basis for petitioner to argue that: (*a*) a penalty of fine may not be imposed in the case of Online Libel; and (*b*) Section 6 speaks only of imprisonment when it provided for a penalty one degree higher than that provided in the RPC. Clearly, Articles 26, 75, and 355 of the RPC provide that **the penalty of fine may be imposed instead of imprisonment and it may be increased or decreased by degrees**.

The proper penalty for Online Libel.

Considering the foregoing, the Court rules that the CA correctly found that the RTC did not gravely abuse its discretion in imposing the penalty of a fine only. The Court finds that the circumstances surrounding the defamatory Facebook post are akin to one of the circumstances enumerated in AC 08-2008; that is, that Soliman was animated by anger and his perception that private complainant Waldo R. Carpio was provoking him by his allegedly intentional delay in releasing Soliman's sanitary and phytosanitary clearance. This finding is confirmed by the fact that, as found by the RTC, Soliman immediately deleted the libelous post once the Secretary of the Department of Agriculture called his attention and apologized to Carpio several times.[35] Further, the Court also finds that the RTC did not gravely abuse its discretion when it set the amount of the fine imposed at P50,000.00, as will be explained below.

It bears pointing out that Section 91 of RA 10951, which was enacted *before* the crime was committed,[36] increased the penalty of fine for traditional libel (*i.e.*, as defined and penalized under the RPC) as follows:

> Sec. 91. Article 355 of the same Act is hereby amended to read as follows:
>
> > Art. 355. *Libel by means of writings or similar means*. – A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic

> exhibition, or any similar means, shall be punished by *prisión correccional* in its minimum and medium periods **or a fine ranging from Forty thousand pesos (P40,000) to One million two hundred thousand pesos (P1,200,000)**, or both, in addition to the civil action which may be brought by the offended party. (Emphasis and underscoring supplied)

Section 6 of RA 10175 provides that if a penalty of fine is imposed for online libel, it must be one degree higher than that imposed by the RPC. Following Article 75 of the RPC, each degree shall be one-fourth of the maximum amount set by law. Pertinently, the Court, through Associate Justice Marcelino R. Montemayor, applied this rule in the case of *De los Angeles v. People of the Philippines* (*De los Angeles*),[37] where, in ascertaining the correct amount of fine to be imposed for an *attempted* felony, it determined that each degree shall be one-fourth of the maximum amount provided by law.

In this case, then, upon dividing the maximum amount of fine—P1,200,000.00—into four parts (one-fourth of the maximum amount set by law), each degree amounts to P300,000.00. Then, in order to determine the penalty one degree higher, the amount of P300,000.00 shall be added to the maximum amount stated in the *amended* Article 355 of the RPC. Thus, the maximum amount of fine for online libel shall be P1,500,000.00 (P1,200,000.00 + P300,000.00). Further, the minimum shall be unchanged at P40,000.00, following Article 75 of the RPC. Finally, the range of the penalty of fine for online libel shall be from P40,000.00 to P1,500,000.00. Hence, the fine imposed by the RTC at P50,000.00 is within the range imposable by the law.

The Court also emphasizes that, because the minimum and maximum amounts of fine are fixed by law for traditional and consequently, for online libel, then, for the purpose of *reducing* the amount of fine by degrees, the minimum shall remain unchanged, as the Court ruled in *De los Angeles* and as provided by Article 75 of the RPC.

Further, considering that RA 10175 imposes upon online libel a penalty that is one (1) degree higher than traditional libel, then the maximum penalty of fine is P1,500,000.00. For the guidance of the Bench and the Bar, the Court holds that, in the event that it shall be necessary to reduce the penalty of fine for online libel by one (1) degree, then the maximum penalty for online libel shall be reduced by one-fourth (P1,500,000.00 / 4 = P375,000.00). Hence, the range of the penalty shall be P40,000.00, as minimum, to P1,125,000.00, as

maximum. If by two (2) degrees, then the minimum shall also remain unchanged, but the maximum shall be further reduced by another one-fourth of the original maximum penalty. Hence the range of penalty shall be P40,000.00 to P750,000.00.

At this juncture, the Court is mindful of the fact that the IRR of RA 10175 explicitly states a different range of fines as a penalty for online libel, as follows:

> **Section 5. *Other Cybercrimes*.** – The following constitute other cybercrime offenses punishable under the Act:
>
> x x x x
>
> 3. **Libel** – The unlawful or prohibited acts of libel, as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future shall be punished with *prision correccional* in its maximum period to *prision mayor* in its minimum period **or a fine** ranging from Six Thousand Pesos (P6,000.00) up to the maximum amount determined by Court, or both, in addition to the civil action which may be brought by the offended party: *Provided*, That this provision applies only to the original author of the post or on line libel, and not to others who simply receive the post and react to it. (emphasis and underscoring supplied)

The Court also recognizes that as worded, the penalty of *imprisonment* in the IRR for online libel is indeed one degree higher than that provided in the RPC. The fine in the IRR, however, retained the old amount stated in Article 355 of the RPC, without increasing the maximum amount by one degree in accordance with Article 75. Additionally, as stated earlier, Article 355 of the RPC was amended by RA 10951 in 2017.[38] Thus, the passage of RA 10951, and with it, the adjustment of the amount of the fine imposed for libel and other crimes, created a variance between the penalties in Section 6 of RA 10175 and Section 5 of its IRR.

In determining the correct penalty for online libel, the Court finds that the express provision in Section 6 of RA 10175 is controlling than Section 5 of the law's IRR, whose authority for issuance is delegated by the law itself.[39] Settled jurisprudence dictates that implementing rules and regulations should not go against or beyond the law it seeks to implement. Thus,

in case of a conflict between the law and its IRR, the law prevails.[40] As the offense in this case was committed on January 23, 2018, the courts must apply Section 6 of RA 10175 in relation to the RPC's penalty for libel in its amended form in force at the time the offense was committed.

Thus, the Court takes this opportunity to clarify, for the guidance of the Bench and the Bar, that as worded, both the RPC and RA 10175 prescribe the penalty of imprisonment ***or a fine*** for the crimes of Traditional Libel and Online Libel, depending on the circumstances present in each case. ***Both statutes did not alter the character of the penalties of imprisonment and fine as alternatives to each other, or as concurrent penalties, in cases of Online Libel or Libel.***

Applicability of Administrative Circular No. 08-2008 to Online Libel.

Further, and likewise for the guidance of the Bench and the Bar, the Court deems it proper to rule on the applicability of AC 08-2008 in deciding cases of online libel. Petitioner argued that the Circular cannot be applied to online libel because RA 10175 was enacted later and that the "clear letter and intent of [RA 10175] which increases by one degree higher the penalty imposable for libel committed through the use of information and communications technology"[41] prevails over the Circular.

These arguments are untenable.

The Circular does not supplant the legislative intent behind the imposition of a higher degree of penalty in online libel. To be clear, in no way does it mandate the imposition of fine only in libel cases. **In fact, with due deference to prevailing statutes, it is careful to emphasize that it does not remove imprisonment as an alternative penalty**.

Therefore, courts should take note that in the imposition of penalty for libel/on-line libel, they should bear in mind the principles laid down in the Circular, as follows:

> 1. [AC 08-2008] does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code;
>
> 2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the

> imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
>
> 3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment. (Underscoring supplied)

In conclusion, the CA correctly found no grave abuse of discretion on the part of the RTC when the latter court found Soliman guilty beyond reasonable doubt of the crime of Online Libel, and accordingly, sentenced him to suffer the penalty of payment of a fine in the amount of P50,000.00. Notably, said amount is within the prescribed range of fine in online libel, as stated earlier, taking into consideration the provisions of Articles 26, 75, and 355 of the RPC, in relation to Section 91 of RA 10951, and Section 4(c) (4) of RA 10175.

ACCORDINGLY, the petition is **DENIED**. The Decision October 30, 2020 and the Resolution dated May 31, 2021 of the Court of Appeals in CA-G.R. SP No. 162948 are hereby **AFFIRMED**.

SO ORDERED.

Leonen, SAJ., Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, J. Lopez, Dimaampao, Marquez, and *Singh, JJ.*, concur.
Gesmundo, C.J., see concurring opinion.
Caguioa, J., see separate opinion.
Hernando and *Rosario, JJ.*, on leave.

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[1] *Rollo*, pp. 9-30.

[2] *Id.* at 37-52. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Marie Christine Azcarraga-Jacob and Tita Marilyn B. Payoyo-Villordon.

[3] *Id.* at 53-54.

[4] *Id.* at 55-69. Penned by Acting Presiding Judge Maria Luisa Lesle G. Gonzales-Betic.

[5] Section 4(c) 4 of RA 10175 reads:

> Sec. 4. *Cybercrime Offenses*. — The following acts constitute the offense of cybercrime punishable under this Act:
>
> a. x x x
> b. x x x
> c. Content-related Offenses:
> 1. x x x
> x x x
>
> 4. Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

[6] Entitled "AN ACT DEFINING CYBERCRIME, PROVIDING FOR THE PREVENTION, INVESTIGATION, SUPPRESSION AND THE IMPOSITION OF PENALTIES THEREFOR AND FOR OTHER PURPOSES, " approved on September 12, 2012.

[7] *Rollo*, pp. 70-73.

[8] *Id.* at 70-72.

[9] *Id.* at 55-69.

[10] *Id.* at 69.

[11] Issued on January 25, 2008.

[12] *Rollo*, p. 68.

[13] *Id.* at 40, citing Soliman's Comment to the petition for *certiorari*.

[14] Dated October 15, 2019; *id.* at 74-87.

[15] *Id.* at 39-40 & 80-81.

[16] *Id.* at 190-213.

[17] *Id.* at 192-211.

[18] *Id.* at 37-52.

[19] *Id.* at 51.

[20] Entitled "RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 10175, OTHERWISE KNOWN AS THE 'CYBERCRIME PREVENTION ACT OF 2012.'" (August 12, 2015).

[21] *Id.* at 41-51.

[22] *Id.* at 150-162.

[23] *Id.* at 53-54.

[24] *Id.* at 9-30.

[25] *Id.* at 15-27.

[26] **G.R. No. 226335**, June 23, 2021 [First Division].

[27] *Id.*

[28] *Id.*, citing **Atty. Dimayacyac v. CA**, 474 Phil. 139, 147 (2004) [Per J. Austria-Martinez, Second Division], further citing **People v. Ylagan**, 58 Phil. 851, 852-853 (1933) [Per J. Abad-Santos].

[29] **People v. Celorio**, *supra*.

[30] AC 08-2008 recognized that the penalty of fine only was imposed in the following cases:

(a) In *Sazon v. CA*, [325 Phil. 1053 (1996)] [Per J. Hermosisima, Jr.], when the accused wrote the libelous article to defend his honor against malicious messages that circulated in his subdivision;

(b) In *Mari v. CA*, [388 Phil. 269 (2000)] [Per J. Pardo, First Division], when the slander by deed was committed in the heat of anger and in reaction to a perceived provocation;

(c) In *Brillante v. CA*, [511 Phil. 96 (2005)] [Per J. Tinga, Second Division], when libel was committed because of intensely feverish passions evoked during an election season, against public officials in connection with their performance of official duties; and

(d) In *Buatis, Jr. v. CA*, [520 Phil. 149 (2006)] [Per J. Austria-Martinez, First Division], when libel was committed for the first time, motivated by the accused's belief that he was merely exercising his civil or moral duty to his client.

[31] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWS AS 'THE REVISED PENAL CODE,' AS AMENDED," approved on August 29, 2017.

[32] Art. 26 of the REVISED PENAL CODE.

[33] RA 10951 lists thirty-seven (37) felonies imposing fine as an alternative penalty.

[34] See **Microsoft Corporation v. Manansala**, 772 Phil. 14, 22 (2015) [Per J. Bersamin, First Division], citing R. AGPALO, STATUTORY CONSTRUCTION 203 (4th ed., 1998).

[35] *Rollo*, pp. 62 and 68.

[36] RA 10951 was approved on August 29, 2017 and was published in the *Official Gazette* on September 11, 2017. Per the Information, the crime was committed on January 23, 2018.

[37] 103 Phil. 295 (1958).

[38] The IRR was issued on August 12, 2015.

[39] Sec. 28 of RA 10175 reads:

> *Implementing Rules and Regulations*. — The ICTO-DOST, the DOJ and the Department of the Interior and Local Government (DILG) shall jointly formulate the necessary rules and regulations within ninety (90) days from approval of this Act, for its effective implementation.

[40] **Limkaichong v. Land Bank of the Philippines**, 792 Phil. 133, 179 (2016) [Per J. Bersamin, *En Banc*], citing **Commissioner of Internal Revenue v. Bicolandia Drug Corporation**, 528 Phil. 609, 621 (2006) [Per J. Velasco, Jr., Third Division].

[41] *Rollo*, p. 26.

CONCURRING OPINION

GESMUNDO, *C.J.*:

I concur with the well-written *ponencia* as it clarifies and provides guidelines on the proper computation of the penalty of fine for Online Libel. Moreover, the *ponencia* correctly affirms the Court of Appeals' (*CA*) ruling that the trial court did not commit grave abuse of discretion when it imposed against respondent Jomerito S. Soliman (*Soliman*) the penalty of fine only for committing the crime of Online Libel.

I write this Concurring Opinion to support the view that when there is grave abuse of discretion, a petition for *certiorari* under Rule 65 of the Rules of Court is the proper remedy for the prosecution to assail an erroneous penalty in a final judgment of conviction. Contrary to Soliman's submission, such remedy does not violate his right against double jeopardy. Moreover, I briefly look into the rationale behind the imposition of fine in libel cases under Administrative Circular (*AC*) No. 08-2008, or the "*Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*."

The essential facts are as follows:

Soliman was found guilty beyond reasonable doubt of Online Libel under Section 4 of Republic Act (*R.A.*) No. 10175, or the *Cybercrime Prevention Act*, and was sentenced to pay a fine of P50,000.00. In imposing the penalty of **fine only**, the Regional Trial Court (*RTC*) invoked A.C. No. 08-2008, which permits the imposition of fine rather than imprisonment in libel cases.

Soliman no longer appealed, and proceeded to pay the fine imposed. Meanwhile, the Office of Solicitor General (*OSG*) filed a **petition for *certiorari*** with the CA, ascribing grave abuse of discretion on the part of the RTC when it imposed a penalty of fine only.

The OSG contended that based on R.A. No. 10175, the penalty for Online Libel should be "one (1) degree higher than that provided for" in the Revised Penal Code (RPC). Accordingly, the penalty imposed should be *prision correccional* in its maximum period to *prision mayor* in its minimum period instead of a fine only. Soliman countered that the OSG's petition for *certiorari* violates his right against double jeopardy, that a *certiorari* action is an improper remedy to question a final judgment, and that the RTC did not commit

grave abuse of discretion because it has the discretion to impose either imprisonment or fine as the penalty.

The CA denied the petition, finding no grave abuse of discretion on the part of the RTC. It held that if the penalty imposed is erroneous, such error is only one of judgment, not of jurisdiction, and therefore not the proper subject of *certiorari*. Finally, the CA ruled that the *certiorari* petition impinged on Soliman's right against double jeopardy. The OSG moved for reconsideration, which was denied by the CA. Hence, the OSG filed the present petition.

The issue before the Court is whether the CA correctly ruled that the RTC did not gravely abuse its discretion when it imposed the penalty of fine only.

The *ponencia* **denies the petition and affirms the October 30, 2020 Decision and the May 31, 2021 Resolution of the CA in CA-G.R. SP No. 162948**. It holds that a Rule 65 petition is the proper remedy to assail an erroneously imposed penalty which amounted to grave abuse of discretion. Moreover, it declares that such remedy would not place the accused in double jeopardy.

I concur, but deem it necessary to expound on the narrow instance where the extraordinary writ of *certiorari* can be used to correct an erroneous penalty to assail a final judgment of conviction. To stress, not all erroneous penalties can be remedied *via* a petition for *certiorari* as will be discussed below.

Double jeopardy; Final judgment of conviction

One of the pillars of our criminal justice system is the double jeopardy rule.[1] The right against double jeopardy is guaranteed under the 1987 Constitution, *viz*.:

> SECTION 21. 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.

The rule dictates that when a person is charged with an offense and the case is terminated — either by acquittal or conviction or in any other manner without the consent of the accused — the accused cannot again be charged with the same or an identical offense.[2]

Case law states that the double jeopardy rule has several avowed purposes,[3] *viz*.:

> x x x Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it **prevents the State, following conviction, from retrying** the defendant again in the hope of **securing a greater penalty**.[4] (Emphases supplied)

Notably, such rule prohibits the State from assailing a final and executory judgment in order to either reverse the acquittal or, if convicted, to increase the penalty imposed.[5]

A judgment of acquittal "becomes final immediately after promulgation," and thus, it cannot be "recalled thereafter for correction or amendment."[6] The rationale for such rule has been explained thus:

> The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State. x x x." Thus, Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense[,] and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."
>
> It is axiomatic that on the basis of humanity, fairness[,] and justice, an acquitted defendant is entitled to the right of repose as a direct 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.
>
> 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 or 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.[7]

As regards judgments of conviction, it had been resolved in a litany of cases that the rule on double jeopardy "applies when the State **seeks the imposition of a higher penalty against the accused"**[8] **in final and executory judgments**. A judgment of conviction becomes final when: (*a*) the period for perfecting an appeal has lapsed; (*b*) the sentence has been partially or totally satisfied or served; (*c*) the accused has waived in writing his right to appeal; and (*d*) the accused has applied for probation.[9]

Hence, in several cases, the Court declined to modify the penalty after the judgment of conviction had become final.

In *People v. Leones*,[10] it was pronounced that "where the accused after conviction by the trial court did not appeal his conviction, an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy."

In *Tan v. People*,[11] accused Tan was convicted for Bigamy. He later applied for probation, which rendered the judgment final and executory. Thereafter, the prosecution filed a motion for the modification of penalty, arguing that the penalty imposed on the accused was less than that provided in the penal code. The RTC amended the judgment to correct the imposed penalty. Aggrieved, Tan filed an appeal to question the amended judgment, but the

CA denied it. When the case reached the Court, it reinstated the RTC's original judgment. The Court held that the RTC's modification of the judgment after it became final clearly impinged on the accused's basic right against double jeopardy, *viz*.:

> When the trial court increased the penalty on petitioner for his crime of bigamy after it had already pronounced judgment and on which basis he then, in fact, applied for probation, the previous verdict could only be deemed to have lapsed into finality.[12]

The Court added that the filing of the application for probation is "deemed a waiver of the right to appeal," which causes the judgment to become final.[13] For this reason, the prosecution could no longer seek a modification of the penalty.

In *Estarija v. People*,[14] the judgment of conviction had attained finality after the period for perfecting an appeal had lapsed. In said case, the RTC erroneously imposed a straight penalty of 7 years, instead of an indeterminate penalty, against the accused who was convicted of violation of Section 3(b) of R.A. No. 3019. On appeal, the CA affirmed the conviction but modified the penalty to an indeterminate penalty of six (6) years and one (1) month to nine (9) years of imprisonment. The case was elevated to this Court *via* an appeal by *certiorari* under Rule 45. On the procedural aspect, the Court held that the accused erroneously filed an appeal with the CA considering that appellate jurisdiction over the case was with the Sandiganbayan. In light of the failure to perfect the appeal before the Sandiganbayan, the judgment of conviction by the RTC became final and executory. Thus, it could no longer be modified. Anent the proper penalty, while the Court agreed with the CA's pronouncement on the correct penalty, it concluded that the penalty imposed by the RTC could no longer be modified "**since the decision of the RTC has long become final and executory**."[15]

In *Tamayo v. People*[16] (*Tamayo*), the Court emphasized that a judgment of conviction may be modified or set aside only when it is not yet final, elucidating thus:

> Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered[,] or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it. No court, not even this Court, has the power

> to revive, review, or modify a judgment which has become final and executory. This rule is grounded on the fundamental principle of public policy and sound practice that the judgment of the court must become final at some definite date fixed by law. It is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.[17]

Also in *Tamayo*, the Court noted that the RTC imposed against therein petitioner a minimum term inaccurate by one day, but quickly added the following observation:

> Be that as it may, we can no longer correct the foregoing penalty, even if it is erroneous, because, as earlier ruled, the judgment of conviction has become final and executory. We have held that the subsequent discovery of an erroneous penalty will not justify correction of the judgment after it has become final.[18] (Underscoring supplied)

In *De Vera v. De Vera*[19] (*De Vera*), the trial court convicted the accused for Bigamy. In imposing the penalty, the court appreciated the mitigating circumstance of voluntary surrender. The accused applied for and was granted probation. Later, the private complainant questioned the non-mitigation of penalty. When the case reached the Court, it was held that private complainant's prayer to increase the penalty imposed against the accused was not tenable because of the constitutional proscription against double jeopardy. It stated thus:

> In filing her motion for reconsideration before the RTC and her petition for *certiorari* before the CA, petitioner sought the modification of the court's judgment of conviction against Geren, because of the allegedly mistaken application of the mitigating circumstance of "voluntary surrender". **The eventual relief prayed for is the increase in the penalty imposed on Geren. Is this action of petitioner procedurally tenable?**
>
> x x x x
>
> Records show that after the promulgation of the judgment convicting Geren of bigamy, it was petitioner (as private complainant) who moved for the reconsideration of the RTC decision. This was **timely opposed by Geren,**

invoking his right against double jeopardy.

x x x x

In [*People v. Court of Appeals*], the trial court convicted the accused of homicide. The accused thereafter appealed his conviction to the CA which affirmed the judgment of the trial court but increased the award of civil indemnity. The [OSG], on behalf of the prosecution, then filed before this Court a petition for *certiorari* under Rule 65, alleging grave abuse of discretion. The OSG prayed that the appellate court's judgment be modified by convicting the accused of homicide without appreciating in his favor any mitigating circumstance. **In effect, the OSG wanted a higher penalty to be imposed**. The Court declared that **the petition constituted a violation of the accused's right against double jeopardy; hence, dismissible. Certainly, we are not inclined to rule differently.**[20] (Emphases supplied)

A similar pronouncement was made recently in *People v. Begino*[21] where the Court observed that the trial court erred in computing the penalty imposed in three estafa cases in the sense that the indeterminate penalty imposed "went beyond" the penalty prescribed. Notwithstanding this error, the Court held that such penalties **"can no longer be corrected, even if erroneous, because the judgment of conviction has become final and executory** after [the accused] chose not to appeal these cases." It emphasized that "[a]n erroneous judgment, as thus understood, is a valid judgment."[22]

In the above cases, the Court had consistently held that a final judgment of conviction can no longer be modified even when the penalty imposed is inaccurate. Based on the foregoing pronouncements, the general rule is thus clear – that in final and executory judgments of conviction, the prosecution cannot move for the increase of the penalty imposed, lest the accused's right against double jeopardy will be violated.[23] As will be discussed below, narrow exceptions to this rule have been created in jurisprudence.

Meanwhile, it bears noting that in the present case, the conviction of Soliman became final and executory when he opted not to file an appeal and totally satisfied the sentence by paying the fine. Thus, following the general rule, the prosecution can no longer move to increase the penalty imposed.

Limited exceptions against a final and executory judgment; grave abuse of discretion as an exception

The prohibition against double jeopardy, however, is not absolute. Case law provides the following recognized and narrow exceptions:

> The **state may challenge** the lower court's acquittal of the accused or **the imposition of a lower penalty** on the latter in the following recognized exceptions: (1) where the prosecution is deprived of a fair opportunity to prosecute and prove its case, tantamount to a deprivation of due process; (2) where there is a finding of mistrial; or (3) **where there has been a grave abuse of discretion**.[24] (Emphases supplied)

Noticeably, the exceptions contemplate even **final and executory** judgments in criminal cases as shown by the inclusion of acquittals.[25] Moreover, in *Villareal v. People*[26] (*Villareal*), it was ruled that, if there indeed exists grave abuse of discretion on the part of the court or tribunal, the finality of judgment does not have the effect of hindering a challenge *via* a Rule 65 petition, to wit:

> [W]e find no irregularity in the partial annulment of the CA Decision in CA-G.R. No. 15520 **in spite of its finality**, as the judgment therein was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.[27] (Emphasis supplied)

Where there is an allegation of grave abuse of discretion, case law instructs that the proper remedy is to file a petition for *certiorari* under Rule 65.[28] The party asking for the review must show that the power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility and that the exercise of such power "must be so patent and gross as to **amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by law or to act at all in contemplation of law.**"[29] When grave abuse of discretion is found to be present, "the accused cannot be considered to be at risk of double jeopardy."[30]

Hence, for the prosecution to properly assail a conviction with an erroneous penalty, it is

not sufficient to show that the court committed an error in imposing the penalty. Grave abuse of discretion must have attended its imposition. Indeed, only in the very limited exception of showing grave abuse of discretion amounting to lack or excess of jurisdiction can a final and executory judgment in a criminal case be challenged.

In *People v. Veneracion*,[31] the Court found grave abuse of discretion on the part of the trial court when it rendered its decision. In that case, the Court held that the trial judge acted with grave abuse of discretion when he refused to impose the then statutorily mandated death penalty for the crime of rape with homicide based on his "religious convictions." The Court explained that "a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances."[32] Considering that the erroneous penalty was imposed based on grave abuse of discretion, the case was remanded to the trial court for the imposition of the death penalty.

In *People v. Celorio*[33] (*Celorio*), the Court declared that there is grave abuse of discretion when a trial court imposes a sentence based on a completely non-existent or repealed legal provision. This constituted such grave abuse of discretion that it amounts to the lack or excess of jurisdiction on the part of the trial court. In *Celorio*, the trial court found the accused guilty of violating a penal provision in the Social Security Law; however, it imposed a penalty of only one (1) year imprisonment based on the old law that was already inexistent at the time of the commission of the crime. The then prevailing statute clearly provides that the imposable penalty should be substantially higher, *i.e.*, not less than six (6) years and one (1) day nor more than twelve (12) years. The Court explained thus:

> Imposing a **legally baseless sentence** is not only a serious deviation of a judge's duty under the Rules of Court, but a clear violation of the separation of powers, a doctrine that is of utmost importance in a democratic republic such as ours. In line with such a doctrine, **judges cannot arrogate upon themselves the role of lawmakers. They are prohibited from legislating and imposing penalties out of thin air.** In the words of the Chief Justice, it "basically betrays sovereign will and deviates from the intention of [the] People's representatives elected to primarily determine policies of governance." It is an arbitrary act based on the judge's "will alone and not upon any course of reasoning and exercise of [lawful] judgment." It is precisely this kind of error that the RTC committed in imposing a sentence that no longer exists under R.A. No. 1161,

> which had already been amended by R.A. No. 8282.[34] (Emphases supplied; citations omitted)

Verily, the trial court committed grave abuse of discretion in *Celorio*, not merely because of the wrong computation of penalty, but also because the trial court relied on a repealed law, which is completely baseless. Hence, the Court stated that a judgment which imposes a sentence based on a non-existent or repealed law, "is a void judgment that created no rights and imposed no duties." As a result, "all acts performed pursuant to it and claims emanating from it have no legal effect."[35] Hence, even though *Celorio* applied for probation, the same would not produce any legal effect because a void judgment can never become final and executory. The Court pronounced that "a modification of an invalid sentence or penalty" based on a non-existent law "does not amount to double jeopardy."[36]

To emphasize, the general rule remains that the prosecution cannot ask for an increase of the penalty imposed in a final and executory judgment without violating the right of the accused against double jeopardy. The only exception is when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court that rendered the judgment.

Application to this case

Guided by the foregoing pronouncements, it is evident in the present case that **a petition for *certiorari* is the proper remedy** for the prosecution to assail the RTC's imposition of fine only, on the alleged ground of grave abuse of discretion in not imposing a higher penalty. However, the OSG eventually failed to prove grave abuse of discretion on the part of the trial court.

To reiterate the general rule, in judgments of conviction which are final and executory, the prosecution can no longer pray for the increase of the penalty imposed by the trial court, for to do so would violate the accused's right against double jeopardy. An exception to this rule is when there is grave abuse of discretion in the imposition of the penalty, such as when the penalty is completely baseless. Jurisprudence is clear that the proper remedy in such instance is to file a petition for *certiorari* under Rule 65.[37] Besides, an appeal is not an available remedy in the present case considering that the judgment had attained finality. To recall, Soliman no longer assailed the judgment against him and fully satisfied the sentence by paying the fine. Hence, in this case, the prosecution correctly filed a petition for *certiorari* to assail the penalty meted out in the judgment of conviction on the ground of

grave abuse of discretion.

However, even though *certiorari* is the proper procedural vehicle to assail grave abuse of discretion, it is still incumbent upon petitioner to clearly demonstrate that the trial court committed grave abuse of discretion wherein it blatantly abused its authority.[38] Mere allegation of grave abuse is insufficient. The trial court must be shown to have committed not merely reversible errors, but errors of jurisdiction. The difference between errors of judgment and errors of jurisdiction has been explained thus:

> An **error of judgment** is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, **while** an **error of jurisdiction** is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with *grave abuse* of discretion which is tantamount to lack or in excess of jurisdiction, and which error is correctable only by the extraordinary writ of *certiorari*.[39]

In this case, the *ponencia* found that there was no error of jurisdiction, and therefore, *certiorari* petition cannot prosper.

The *ponencia* declared that, contrary to the prosecution's arguments, the fine imposed on Soliman was within the range of penalty prescribed for Online Libel. After masterfully weaving the pertinent statutory provisions of the Revised Penal Code (*RPC*),[40] the Cybercrime Prevention Act or R.A. No. 10175,[41] and R.A. No. 10951,[42] the *ponencia* found that the range of the penalty of fine for Online Libel shall be "from P40,000.00 to P1,500,000.00." The trial court judge, therefore, has the discretion to impose any amount within this range. Thus, in the present case, the RTC could not be considered to have abused its discretion when it imposed a fine of P50,000.00, which is within the abovementioned range.

Evidently, even though the prosecution availed of the correct procedural vehicle, it failed to substantiate its claim of grave abuse of discretion. Hence, the prosecution's prayer to increase the penalty cannot be granted without violating Soliman's right against double jeopardy.

Having discussed the double jeopardy concept as applied to this case, I proceed to support the *ponencia*'s discussion on A.C. No. 08-2008.

Administrative Circular No. 08-2008 (A.C. No. 08-2008)

In the present case, the prosecution takes issue with the RTC's imposition of fine only pursuant to A.C. No. 08-2008. It contends that the RTC gravely abused its discretion when it did not impose against Soliman the penalty of imprisonment despite R.A. No. 10175 requiring that the penalty shall be one degree higher than that provided in the RPC.[43] As phrased in the *ponencia*, the prosecution argues that A.C. No. 08-2008 cannot be applied to Online Libel because R.A. No. 10175 was enacted later and thus, its prescribed penalty prevails over that stated in the Circular.

I concur with the *ponencia* that the argument is not meritorious.

For reference, the RPC provides that the penalty for traditional Libel under Article 355 thereof is "*prision correccional* in its minimum and medium periods ***or*** a fine ranging from 200 to 6,000 pesos." Noticeably, with the use of the word "or," the penal law explicitly gives the discretion to the court on whether to impose fine as an alternative to imprisonment. The directive under R.A. No. 10175 to impose a penalty "one degree higher" does not remove the discretion of courts to impose fines as an alternative to imprisonment. The *ponencia* thoroughly discusses and computes how "one degree higher" is applied to the penalty of fine.[44] Hence, the "one degree higher" standard in R.A. No. 10175 cannot be interpreted to mean, as the prosecution suggests, that imprisonment is the only viable penalty for Online Libel infractions.

To reiterate, A.C. No. 08-2008 provides the guidelines expressing a preference for imposing fine over imprisonment for those convicted of libel. The circular reads thus:

> **SUBJECT:** GUIDELINES IN THE OBSERVANCE OF A RULE OF PREFERENCE IN THE IMPOSITION OF PENALTIES IN LIBEL CASES.
>
> Article 355 of the Revised Penal Code penalizes libel, committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, with *prision correccional* in its minimum and medium periods ***or*** fine ranging from 200 to 6,000 pesos, ***or both***, in addition to the civil action which may be brought by the offended party.
>
> In the following cases, the Court opted to impose only a fine on the person

convicted of the crime of libel:

x x x x

The foregoing cases indicate an **emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases** under the circumstances therein specified.

All courts and judges concerned should henceforth take note of the foregoing **rule of preference** set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative **Circular does not remove imprisonment as an alternative penalty** for the crime libel under Article 355 of the Revised Penal Code;

2. The Judges concerned may, in the **exercise of sound discretion**, and taking into consideration the peculiar circumstances of each case, **determine whether the imposition of a fine alone would best serve the interests of justice** or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice;

3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provision on subsidiary imprisonment. (Emphases supplied)

As expressed in *Punongbayan-Visitacion v. People*,[45] "judicial policy states a fine alone is generally acceptable as a penalty for libel. Nevertheless, the courts may [still] impose imprisonment as a penalty" if it is proper under the circumstances.

In *Fermin v. People*,[46] although the Court acquitted the petitioner, it proceeded to explain that the imposition of fine in libel cases consonant with A.C. No. 08-2008 is justified in view of the "relatively wide latitude given to utterances against public figures" such as the private complainants in that case.

In *Tulfo v. People*,[47] the Court discussed the import of A.C. No. 08-2008 and promoted the use of civil actions against defamation, *viz*.:

> In libel, the kinds of speech actually deterred are more valuable than the State interest the law against libel protects. The libel cases that have reached this Court in recent years generally involve notable personalities for parties, highlighting a propensity for the powerful and influential to use the advantages of criminal libel to silence their critics.
>
> In any event, alternative legal remedies exist to address unwarranted attacks on a private person's reputation and credibility, such as the Civil Code chapter on Human Relations. Civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech, and avoid the unnecessary chilling effect on criticisms toward public officials. The proper economic burden on complainants of civil actions also reduces the possibility of using libel as a tool to harass or silence critics and dissenters.[48]

In sum, the rule of preference for imposing fines instead of imprisonment is a judicial policy that is consistent with the penal statutes. The rule of preference expressed in A.C. No. 08-2008 simply reflects the discretion exercised by the Court in penalizing those found liable for committing libel.

All told, considering that Soliman no longer filed an appeal and had in fact paid the fine, the judgment against him has attained finality. As a rule, the prosecution can no longer move to increase the imposed penalty even if it be erroneous, unless the trial court committed grave abuse of discretion. It must be stressed that a petition for *certiorari* is the proper vehicle for the prosecution to assail an erroneous penalty in a final judgment of conviction on the ground of grave abuse of discretion, but the prosecution must still prove that grave abuse of discretion is indeed present. Reversing or modifying a judgment of conviction based on a finding of grave abuse of discretion, would not violate the right of the accused against double jeopardy.

On the merits, I concur with the *ponencia*'s ruling that the trial court did not commit grave abuse of discretion in imposing against Soliman the penalty of fine of P50,000 for Online Libel.

As regards the imposition of fine only, I likewise concur that such rule of preference under A.C. No. 08-2008 is consistent with the statutory provision indicating the alternative penalties that the court may choose to impose in libel cases.

WHEREFORE, I vote to **DENY** the petition.

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[1] **Villareal v. People**, 680 Phil. 527, 555 (2012).

[2] *Id.*

[3] **People v. Dela Torre**, 430 Phil. 420 (2002).

[4] *Id.* at 430.

[5] See **Villareal v. People**, *supra*, at 556 and **People v. Dela Torre**, *supra*, at 430. For reversal of acquittal, see **Kepner v. United States**, 11 Phil. 669, 701-702 (1904).

[6] See **People v. Alejandro**, 823 Phil. 684, 694 (2018), citing **Villareal v. Aliga**, 724 Phil. 47, 62 (2014) stating that "a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation;" **Cea v. Cinco**, 96 Phil. 131, 137 (1954), citing Chief Justice Moran's Comments on the Rules of Court, 1952 ed., Vol. 2, page 867.

[7] **People v. Arcega, G.R. No. 237489**, August 27, 2020, citing **People v. Velasco**, 394 Phil. 517, 555-557 (2000).

[8] **Villareal v. People**, *supra*, at 559-560, citing **De Vera v. De Vera**, 602 Phil. 877, 885 (2009); **People v. Dela Torre**, *supra*, at 430-431; **People v. Leones**, 418 Phil. 804, 806 (2001); **People v. Ruiz**, 171 Phil. 400, 403 (1978); **People v. Pomeroy**, 97 Phil. 927, 938-940 (1955), citing **People v. Ang Cho Kio**, 95 Phil. 475 (1954).

[9] See **Teodoro v. Court of Appeals**, 328 Phil. 116, 122 (1996); see Section 7, Rule 120 of the Rules of Court.

[10] *Supra*.

[11] 430 Phil. 685 (2002).

[12] *Id.* at 694.

[13] *Id.* at 695.

[14] 619 Phil. 457 (2009).

[15] *Id.* at 463-464.

[16] 582 Phil. 306 (2008).

[17] *Id.* at 319-320.

[18] *Id.* at 327.

[19] *Supra* note 8.

[20] *Id.* at 883-885.

[21] **G.R. No. 251150**, March 16, 2022.

[22] *Id.*

[23] See **De Vera v. De Vera**, *supra*, at 885.

[24] **Villareal v. People**, *supra* note 1, at 557-558.

[25] See **Villa Gomez v. People, G.R. No. 216824**, November 10, 2020, citing **People v. Alejandro**, 823 Phil. 684, 692 (2018), where the Court *en banc* held that "a judgment of acquittal (or order of dismissal amounting to acquittal) may only be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court."

[26] 749 Phil. 16 (2014) [Resolution].

[27] *Id.* at 43.

[28] See **Villareal v. People**, *supra*, at 558; see also **De Vera v. De Vera**, *supra*.

[29] **People v. Celorio, G.R. No. 226335**, June 23, 2021; see also **Villareal v. People**, *supra*.

[30] **Villareal v. People**, *id.*

[31] **People v. Veneracion**, 319 Phil. 364 (1995).

[32] *Id.* at 373.

[33] *Supra*.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] See **Villareal v. People**, *supra* note 1, at 558-560; see also **De Vera v. De Vera**, *supra* note 8, at 885-886. Appeal is not the proper remedy as held in these cases: (a) **People v. Dela Torre**, *supra* note 3, at 422, which stated that "[t]he prosecution **cannot appeal** a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction"; and (*b*) **People v. Leones**, *supra* note 8, at 806-807, stating that "even assuming that the penalties imposed by the trial court were erroneous, these cannot be **corrected on appeal** by the prosecution because these are merely errors of judgment and not of jurisdiction." (Emphases supplied)

[38] See **People v. Dela Torre**, *supra*, at 431, citing **People v. Court of Appeals and Maquiling**, 368 Phil. 169, 185 (1999).

[39] P**eople v. Celorio**, *supra* note 29, citing **Toh v. Court of Appeals**, 398 Phil. 793, 801-802 (2000).

[40] Articles 26 and 75 of the Revised Penal Code (RPC) as well as Article 355 of the RPC as amended by Section 91 of Republic Act No. (RA) 10951.

[41] Sections 4(c)(4) and 6 of RA 10175 or the *Cybercrime Prevention Act of 2012*, approved on September 12, 2012, which provide that the penalty for Online Libel is **one degree higher** than that provided for by the [RPC].

[42] Section 91 of Republic Act No. (RA) 10951 or *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code*, approved on August 29, 2017.

[43] See *Ponencia*, p. 4.

[44] *Id.* at 9-10.

[45] 823 Phil. 212, 224 (2018).

[46] 573 Phil. 278, 300 (2008).

[47] **G.R. Nos. 187113 & 187230**, January 11, 2021.

[48] *Id.*

SEPARATE OPINION

CAGUIOA, *J.*:

The penalty imposed upon respondent Jomerito S. Soliman (Soliman) has already attained finality, and can no longer be amended.

Based on the facts, Soliman was charged with Online Libel, defined and penalized under Section 4(c)(4) and 6 of Republic Act (R.A.) No. 10175, otherwise known as the *Cybercrime Prevention Act of 2012*, for a Facebook post against private complainant Waldo R. Carpio (Carpio), the then Assistant Secretary of the Department of Agriculture.[1] Soliman intended to convey in the said post that Carpio took favors and unduly delayed the release of Soliman's Sanitary and Phytosanitary Import clearance.[2]

In a Decision[3] dated August 23, 2019, the Regional Trial Court, Branch 90, Quezon City (RTC) found Soliman guilty beyond reasonable doubt of Online Libel and imposed upon him a fine in the amount of P50,000.00 with subsidiary imprisonment in case of non-payment thereof.[4] **Soliman paid the fine and no longer appealed his conviction.**[5]

Believing that the RTC committed grave abuse of discretion in imposing only a fine, the petitioner People of the Philippines (the People) filed a Petition for *Certiorari*[6] before the Court of Appeals (CA), arguing that when a crime covered by the Revised Penal Code (RPC) is committed through the use of information and communication technologies, Section 6 of R.A. No. 10175 provides that the penalty shall be one (1) degree higher than that provided by the RPC.[7] Libel under Article 355 of the RPC is punished by *prision correccional* in its minimum and medium periods, or a fine ranging from P200.00 to P6,000.00, or both.[8] Thus, instead of a fine, the People claims that the imposable penalty for Online Libel is *prision correccional* in its maximum period to *prision mayor* in its minimum period.[9]

In a Decision[10] dated October 30, 2020, the CA denied the Petition ruling that the RTC did not commit grave abuse of discretion in imposing only a fine. According to the CA, assuming

that the penalty imposed was erroneous, this error was one of judgment and not of jurisdiction because it involves the court's appreciation of the facts and conclusions of law drawn from such facts.[11] The CA also ruled that the laws on libel did not remove the discretion of the courts to impose the penalty of only a fine.[12] The CA concluded that the People's Rule 65 petition against the RTC Decision violated Soliman's right against double jeopardy.[13]

The People then filed the present petition[14] before the Court reiterating its arguments that: (1) a Rule 65 petition is a remedy to assail the erroneous penalty imposed by the RTC since this does not violate Soliman's right against double jeopardy; and (2) the RTC gravely abused its discretion when it imposed the penalty of a fine only as this was contrary to Section 6 of R.A. No. 10175.[15]

The *ponencia* rules that the present petition should be denied as the RTC did not gravely abuse its discretion since the laws on Libel and Online Libel allow the imposition of the penalty of fine as an alternative to imprisonment. Moreover, double jeopardy herein has attached.

I fully agree with the finding that the RTC correctly imposed the alternative penalty of fine and likewise concur with the guidelines set forth in the *ponencia*.

Further, I submit this Separate Opinion in order to emphasize that the prosecution can no longer file a special civil action of *certiorari* in order to correct an error in the penalty imposed by the lower court. By filing a Rule 65 Petition, the prosecution believes that when a trial court imposes an erroneous penalty, the same may be corrected through *certiorari* even though the conviction has already attained finality. This is wrong.

A petition for *certiorari* under Rule 65 of the Rules of Court is an extraordinary remedy which may be availed of only when the following requisites concur: (1) the tribunal, board, or officer exercises judicial functions; (2) such tribunal, board, or officer acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.[16] Its scope of review is narrow and limited only to errors of jurisdiction, to wit:

> By comparison, nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion

is alleged and proved to exist. Likewise, **jurisprudence is also settled in defining the phrase "grave abuse of discretion" as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.** In some rare instances, the term "grave abuse" even refers to cases in which there has been a gross misapprehension of facts but only for the limited purpose of establishing the allegation of grave abuse of discretion. **Correspondingly, the term "without jurisdiction" means that the court acted with *absolute* lack of authority; while the term "excess of jurisdiction" means that the court transcended its power or acted without any statutory authority.** As such, petitioner has the burden of proof to show that the act of the public respondent in issuing the impugned order (or decision, in some cases) lacked or exceeded its jurisdiction because mere abuse is not enough — it must be grave. This is done by clearly showing, to the satisfaction of the reviewing court, the presence of caprice and arbitrariness in the exercise of discretion on the part of the inferior court or tribunal.

In seeking to utilize the benefit from a competent court's corrective hand of *certiorari*, a petitioner must bear in mind that such procedural remedy is essentially supervisory and is specifically invoked to keep lower courts and other tribunals within the bounds of their jurisdiction. A *Writ of Certiorari* is an extraordinary remedy which may only be availed of when there is no appeal or when there is no plain, speedy and adequate remedy in the ordinary course of law. **Unlike the different modes of appeal, the supervisory jurisdiction of a court over the issuance of a *Writ of Certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a lower court's judgment — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision.** This is because a *Writ of Certiorari* is a remedy used to correct errors of jurisdiction — for which reason, it must clearly show that the public respondent had no jurisdiction to issue an order or to render a decision. Viewed in a different angle, such extraordinary *writ* is strictly confined to the determination of the propriety of the trial court's jurisdiction — whether it had the authority to take cognizance of the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave

> abuse of discretion amounting to lack or excess of jurisdiction. Therefore, the remedy itself is narrow in scope.[17] (Emphasis supplied; italics in the original and citations omitted)

Thus, *certiorari* cannot be used to correct errors of judgment which the court may commit in the exercise of its jurisdiction. I quote with approval the discussion of the CA on the difference between an error of judgment and an error of jurisdiction, *viz*.:

> Further, the petitioner may not have thoroughly comprehended the matter of penalty imposition that is part and parcel of a judge's job in deciding a criminal action. It ought to be emphasized and reiterated that a mistake in the imposition of a penalty is truly an error of judgment and not an error of jurisdiction. The former, as shown above, is the subject of an ordinary appeal while the latter is properly the subject of a Rule 65 *certiorari* petition. In coming to the Court *via* Rule 65, the petitioner overlooked Rule 122 of the Revised Rules of Criminal Procedure which allows an appeal in a criminal action by either party (accused or prosecution) provided the right of an accused against double jeopardy is not infringed. Whether or not by design or inadvertence, the remedy sought, ought to have been contemplated well for it is not merely a statute or jurisprudence that stands in the way of the desired objective, but the very Constitution itself from which all laws and actions of men must flow.[18]

As correctly pointed out by the CA, the RTC herein had jurisdiction over both the criminal action and over the person of the accused. Thus, any alleged flaw in the penalty imposed constitutes merely an error of judgment.[19] Thus, when this alleged error is questioned through a Rule 65 petition, this clearly violates the right of Soliman against double jeopardy.

Double jeopardy attaches when the following requisites are present: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of competent jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) the accused was convicted by final judgment, or acquitted, or the case was dismissed without his express consent.[20]

All these requisites are present in this case. Therefore, the penalty imposed can no longer be revisited without offending the right against double jeopardy notwithstanding any errors

of judgment committed by the RTC. The judgment of conviction of Soliman, which he no longer appealed and has already attained finality, cannot be reopened by the People through a special civil action for *certiorari* because of the doctrine that nobody may be put twice in jeopardy for the same offense. To drive home the point, if Soliman were acquitted — even if the same be erroneous — the prohibition against double jeopardy bars the re-litigation of the case. Analogously, as Soliman's conviction is already final, then the judgment could no longer be questioned by the People.

The case of *People v. Celorio*[21] (*Celorio*) does not apply. This case presents a very narrow and limited instance wherein the extraordinary writ of *certiorari* was granted to correct clear errors of jurisdiction (*i.e.*, completely baseless penalty imposed by the trial court). In *Celorio*, the RTC therein imposed a non-existent penalty since the law on which it was based was already repealed. This was an error of jurisdiction because the court's jurisdiction to impose a penalty should be provided by an existing law. In the words of the Court, the imposition of a sentence based on a repealed law is actually a violation of the separation of powers and hence directly offends the Constitution:

> Imposing a legally baseless sentence is not only a serious deviation of a judge's duty under the Rules of Court, but a clear violation of the separation of powers, a doctrine that is of utmost importance in a democratic republic such as ours. In line with such a doctrine, judges cannot arrogate upon themselves the role of lawmakers. They are prohibited from legislating and imposing penalties out of thin air. In the words of the Chief Justice, it "basically betrays sovereign will and deviates from the intention of [the] People's representatives elected to primarily determine policies of governance." It is an arbitrary act based on the judge's "will alone and not upon any course of reasoning and exercise of [lawful] judgment." It is precisely this kind of error that the RTC committed in imposing a sentence that no longer exists under R.A. No. 1161, which had already been amended by R.A. No. 8282. x x x[.][22] (Citations omitted)

Another example where the Court granted the extraordinary writ of *certiorari* is the 1995 case of *People v. Veneracion*,[23] (*Veneracion*) where what was deemed as grave abuse of discretion was the RTC judge's act of using his religious beliefs in imposing a penalty that had no basis in law since he did not want to impose the death penalty. Accused therein were convicted by the RTC judge for the crime of Rape with Homicide, but he imposed the

penalty of *reclusion perpetua* despite the clear mandate of R.A. No. 7659 that the same be penalized by *death*. *Veneracion* was thus not a case wherein the judge was ignorant of the law; instead, it involved a judge who was fully aware of the proper penalty for the crime the accused was convicted, but deliberately refused to impose the same because of his personal religious convictions, *viz*.:

> Clearly, under the law, the penalty imposable for the crime of Rape with Homicide is not *Reclusion Perpetua* but Death. While Republic Act 7659 punishes cases of ordinary rape with the penalty of *Reclusion Perpetua*, it allows judges the discretion — depending on the existence of circumstances modifying the offense committed — to impose the penalty of either *Reclusion Perpetua* **only** in the three instances mentioned therein. Rape with homicide is not one of these three instances. The law plainly and unequivocably provides that "[w]hen by reason or on the occasion of rape, a homicide is committed, the penalty shall be **death**." The provision leaves no room for the exercise of discretion on the part of the trial judge to impose a penalty under the circumstances described, other than a sentence of death.
>
> We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. x x x[.][24] (Emphasis and italics in the original)

Thus, the Court ruled that the Rules of Court clearly mandate that judges should impose the proper penalty provided by law, regardless of their religious beliefs or political opinions.[25] It is a settled rule that courts are not concerned with the wisdom, efficacy, or morality of laws.

It is emphasized that these two cases are exceptional and are not applicable to the present case. Verily, since a judgment of conviction does not attain finality until after the reglementary period to appeal thereof has passed — and consequently, the first jeopardy

will not attach until such time — then an appeal, not a petition for *certiorari*, is the proper remedy available to the People to assail a judgment of conviction that imposes an erroneous penalty. Thus, the rule is that the prosecution cannot seek the increase of the penalty imposed in a final and executory judgment. To do so would be a violation of the constitutional right of the accused against double jeopardy. This has been consistently applied by the Court in numerous occasions.

In *People v. Court of Appeals*,[26] (*People v. CA*) the Court dismissed the petition for *certiorari* filed by the People seeking to reinstate the penalty of imprisonment imposed by the RTC against the accused therein after the CA deleted the same and instead imposed a fine of P200,000.00 for each violation of Batas Pambansa Blg. 22. The Court refused to modify the penalty since the CA decision had already attained finality and consequently double jeopardy had already attached. The Court emphasized that whatever error may have been committed by the CA was merely an error of judgment and not of jurisdiction. Even assuming that the CA erroneously substituted the penalty of imprisonment with a fine, this can no longer be corrected.

In *Heirs of Tito Rillorta v. Judge Firme*[27] (*Rillorta*), private complainants in the case sought to increase the civil indemnity imposed against accused because they believed that he should have been found guilty of homicide instead of only less serious physical injuries. The Court ruled that an accused may not be convicted of a more serious offense or sentenced to a higher penalty in order to justify the increase in the civil indemnity. This is not permitted under the constitutional prohibition against double jeopardy. The Court stressed that if the government itself cannot appeal, much less then can the offended party, or his or her heirs.

Similar to *Rillorta*, private complainant in *De Vera v. De Vera*[28] (*De Vera*) prayed, *via* a special civil action for *certiorari* before the CA, for the increase of the penalty imposed by the trial court against the accused who was convicted of Bigamy. Private complainant sought the modification of the RTC's judgment of conviction based on the theory that it had erroneously applied the mitigating circumstance of voluntary surrender. Meanwhile, accused sought for and was granted probation. When private complainant's petition was denied by the CA, she sought recourse to the Court which affirmed the CA's decision. Private complainant's petition was denied because she sought an increase of the penalty which the RTC imposed, and would resultantly place the accused in double jeopardy. The Court also emphasized the exceptional nature of *Veneracion*, *viz*.:

> Indeed, a petition for *certiorari* may be resorted to on jurisdictional grounds. **In *People v. Veneracion*, we entertained the petition for *certiorari* initiated by the prosecution to resolve the issue of whether the RTC gravely abused its discretion in imposing a lower penalty.** In that case, the trial judge, fully aware of the appropriate provisions of the law, refused to impose the penalty of death because of his strong personal aversion to the death penalty law, and imposed instead *reclusion perpetua*. In resolving the case in favor of the prosecution, the Court concluded that the RTC gravely abused its discretion, and remanded the case to the trial court for the imposition of the proper penalty. By so doing, we allowed a modification of the judgment not on motion of the accused but through a petition initiated by the prosecution. **But it was an exceptional case. Here and now, we reiterate the rule that review is allowed only in apparently void judgments where there is a patent showing of grave abuse of discretion amounting to lack or excess of jurisdiction. The aggrieved parties, in such cases, must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.**[29] (Emphasis supplied; italics in the original and citations omitted)

In *Tan v. People*,[30] (*Tan*) the accused therein was also convicted of Bigamy by the RTC. He no longer appealed his conviction and instead applied for probation which the RTC granted. However, the prosecution, by motion, sought modification of the penalty imposed claiming that it was erroneous since the RPC provided a higher penalty. The RTC granted the prosecution's motion and increased the penalty. Accused then appealed before the CA, but his appeal was dismissed. When the case was elevated before the Court, the Court ruled that when accused filed for probation, he had waived his right to appeal and thus rendered the earlier verdict of the RTC final and executory, and thus no longer subject to amendment or modification. Therefore, the RTC's subsequent order increasing the penalty after it had previously granted the application for probation of accused violated his right against double jeopardy.

People v. CA, Rillorta, De Vera, and *Tan* illustrate the clear rule that a final judgment of conviction cannot be reopened by the People through a special civil action for *certiorari* because of the doctrine that nobody may be put twice in jeopardy for the same offense. I wish to stress that the cases of *Celorio* and *Veneracion* are of exceptional nature and cannot blanketly be used as basis to correct erroneous penalties imposed against an accused.

To summarize, it is immaterial in this case whether the RTC correctly imposed the penalty of a fine only. The fact remains that Soliman's right against double jeopardy has already attached by the finality of the judgment of conviction.

Based on these premises, I vote to **DISMISS** the petition and **AFFIRM** the Decision dated October 30, 2020 and the Resolution[31] dated May 31, 2021 of the Court of Appeals in CA-G.R. SP No. 162948.

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[1] *Rollo*, pp. 38-39, CA Decision.

[2] *Id.* at 38.

[3] *Id.* at 55-69. Penned by Acting Presiding Judge Maria Luisa Lesle G. Gonzales-Betic.

[4] *Id.* at 69.

[5] *Ponencia*, p. 4.

[6] *Rollo*, pp. 74-87, excluding Annexes.

[7] *Ponencia*, p. 4.

[8] SC Administrative Circular No. 08-2008 issued on January 25, 2008, entitled: "Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases."

[9] *Ponencia*, p. 4.

[10] *Rollo*, pp. 37-52. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Marie Christine Azcarraga-Jacob and Tita Marilyn B. Payoyo-Villordon concurring.

[11] *Id.* at 42-43.

[12] *Id.* at 46-47.

[13] *Ponencia*, p. 5.

[14] *Rollo*, pp. 9-30, excluding Annexes.

[15] *Ponencia*, p. 5.

[16] **Madrigal Transport, Inc. v. Lapanday Holdings Corp.**, 479 Phil. 768, 779 (2004).

[17] **Denila v. Republic, G.R. No. 206077**, July 15, 2020, 943 SCRA 599, 646-648.

[18] *Rollo*, pp. 50-51, CA Decision.

[19] *Id.* at 41-43.

[20] **Rural Bank of Mabitac, Laguna, Inc. v. Canicon**, 834 Phil. 346, 362 (2018).

[21] **G.R. No. 226335**, June 23, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67934>.

[22] *Id.*

[23] 319 Phil. 364 (1995).

[24] *Id.* at 372-373.

[25] See *id.* at 374.

[26] 552 Phil. 245 (2007).

[27] 241 Phil. 554 (1988).

[28] 602 Phil. 877 (2009).

[29] *Id.* at 885-886.

[30] 430 Phil. 685 (2002).

[31] *Rollo*, pp. 53-54.

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