

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE CITY COURT OF MANILA, BRANCH VI AND AGAPITO GONZALES Y VENERACION, RESPONDENTS.

G.R. No. L-36528. September 24, 1987

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/49639d23b345/>

PADILLA, J.:

Petition for review on certiorari to set aside the order of the respondent City Court of Manila, Branch VI, dated 20 January 1973, dismissing the information (for violation of Article 201(3) of the Revised Penal Code) against the accused, herein respondent Agapito Gonzales, in Criminal Case no. F-147348 and its amended order, dated 16 March 1973, denying petitioner's motion for reconsideration of the first order.

Respondent Agapito Gonzales, together with Roberto Pangilinan, was accused of violating Section 7, in relation to Section 11, Republic Act No. 3060 and Article 201(3) of the Revised Penal Code, in two (2) separate informations filed with the City Court of Manila on 4 April 1972.

On 7 April 1972, before arraignment in the two (2) cases, the City Fiscal amended the information in Criminal Case no. F-147347 (for violation of Section 7 in relation to Section 11, Rep. Act. No. 3060), by alleging that the accused,

conspiring, and confederating together, and mutually helping each other did then and there willfully, unlawfully, and feloniously publicly exhibit and cause to be publicly exhibited . . . completed composite prints of Motion film, of the 8 mm. size, in color forming visual moving images on the projection screen through the mechanical application of the projection equipment, which motion pictures have never been previously submitted to the Board of Censors for Motion Pictures for preview, examination and censorship, nor duly passed by said Board, in a public place, to wit: at Room 309, De Leon Building, Raon Street corner Rizal Avenue, (Manila).

On the other hand, the information in Criminal Case no. F-147348 (for violation of Article 201(3) of the Revised Penal Code) was amended to allege that, on the same date, 16 July 1971, the same accused,

conspiring and confederating together and actually helping each other, did then and there willfully, unlawfully, feloniously and publicly exhibit, through the mechanical application of movie projection equipment and the use of projection screen, indecent and immoral motion picture scenes, to wit: motion pictures of the 8 mm. size, in color, depicting and showing scenes of totally naked female and male persons with exposed private parts doing the sex act in various lewd and lascivious positions, among other similarly and equally obscene and morally offensive scenes, in a place open to public view, to wit: at Room 309, De Leon Building, Raon Street corner Rizal Avenue, [Manila].

On 31 May 1972, upon arraignment, accused Agapito Gonzales pleaded not guilty to both charges. The other accused, Roberto Pangilinan, was not arraigned as he was (and he still is) at large.

On 26 June 1972, accused Agapito Gonzales filed a motion to quash the informations in the two (2) cases, on the

ground that said informations did not charge an offense. The motion was denied on 17 July 1972 and the cases were set for trial on 7 August 1972.

No hearing was held on 7 August 1972, however, as the accused moved for postponement of the trial set on said date and the trial set on two (2) other dates. On 15 November 1972, the accused Gonzales moved for permission to withdraw his plea of "not guilty" in Criminal Case no. F-147348, without however, substituting or entering another plea. The Court granted the motion and reset the hearing of the cases for 27 December 1972.

On 27 December 1972, accused Gonzales moved to quash the information in Criminal Case no. F-147348 on the ground of double jeopardy, as there was according to him, also pending against him Criminal Case no. F-147347, for violation of Rep. Act No. 3060, where the information allegedly contains the same allegations as the information in Criminal Case no. F-147348.

Petitioner opposed the motion to quash but the respondent City Court, in an order, dated 20 January 1973, dismissed the case (Criminal Case no. F-147348) stating thus:

In one case (F-147347), the basis of the charge is a special law, Rep. Act No. 3060. In the other case (F-147348), the basis of the same is the pertinent provision of the Revised Penal Code. Considering that the allegations in the information of said cases are identical, the plea entered in one case by the accused herein can be reasonably seen as exposing him to double jeopardy in the other case, as said allegations therein are not only similar but [sic] identical facts.

After the dismissal of Criminal Case no. F-147348, or on 7 February 1973, in Criminal Case no. F-147347, the accused changed his plea of "not guilty" and entered a plea of "guilty" for violation of Rep. Act No. 3060. He was accordingly sentenced to pay a fine of P600.00.

On 10 February 1973, petitioner filed a motion for reconsideration of the order of 20 January 1973, dismissing Criminal Case no. F-147348. This was however denied by respondent court in its order dated 15 March 1973, and in its amended order dated 16 March 1973; hence, this petition for review on certiorari.

Petitioner contends that the accused could not invoke the constitutional guarantee against double jeopardy, when there had been no conviction, acquittal, dismissal or termination of criminal proceedings in another case for the same offense[1]. The respondent, on the other hand, argues that conviction or acquittal in, or dismissal or termination of a first case is not necessary, so long as he had been put in jeopardy of being convicted or acquitted in the first case of the same offense[2].

It is a settled rule that to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or a frustration thereof.

All these requisites do not exist in this case.

The two (2) informations with which the accused was charged, do not make out only one offense, contrary to private respondent's allegations. In other words, the offense defined in section 7 of Rep. Act No. 3060 punishing the exhibition of motion pictures not duly passed by the Board of Censors for Motion Pictures does not include or is not included in the offense defined in Article 201(3) of the Revised Penal Code punishing the exhibition of indecent and immoral motion pictures.

The two (2) offenses do not constitute a jeopardy to each other. A scrutiny of the two (2) laws involved would show that the two (2) offenses are different and distinct from each other. The relevant provisions of Rep. Act No.

3060 state:

"Sec. 7. It shall be unlawful for any person or entity to exhibit or cause to be exhibited in any motion picture theater or public place, or by television within the Philippines any motion picture, including trailers, stills, and other pictorial advertisements in connection with motion pictures, not duly passed by the Board; or to print or cause to be printed on any motion picture to be exhibited in any theater, or public place or by television, a label or notice showing the same to have been previously passed by the said Board when the same has not been previously authorized, except motion pictures imprinted or exhibited by the Philippine Government and/or its departments and agencies, and newsreels."

"Sec. 11. Any violation of Section seven of this Act shall be punished by imprisonment of not less than six months but not more than two years, or by a fine of not less than six hundred nor more than two thousand pesos, or both at the discretion of the court. If the offender is an alien, he shall be deported immediately. The license to operate the movie theater or television shall also be revoked. Any other kind of violation shall be punished by imprisonment of not less than one month nor more than three months or a fine of not less than one hundred pesos nor more than three hundred pesos, or both at the discretion of the court. In case the violation is committed by a corporation, partnership or association the criminal liability shall devolve upon the president, manager, administrator, or any official thereof responsible for the violation."

On the other hand, Article 201(3) of the Revised Penal Code provides:

Art. 201. Immoral doctrines, obscene publications and exhibitions. - The penalty of prison correccional in its minimum period, or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon:

xxx 3. Those who in theaters, fairs, cinematographs, or any other place open to public view, shall exhibit indecent or immoral plays, scenes, acts, or shows; xxx

It is evident that the elements of the two (2) offenses are different. The gravamen of the offense defined in Rep. Act No. 3060 is the public exhibition of any motion picture which has not been previously passed by the Board of Censors for Motion Pictures. The motion picture may not be indecent or immoral, but if it has not been previously approved by the Board, its public showing constitutes a criminal offense[3]. On the other hand, the offense punished in Article 201(3) of the Revised Penal Code is the public showing of indecent or immoral plays, scenes, acts, or shows, not just motion pictures[4].

The nature of both offenses also shows their essential difference. The crime punished in Rep. Act No. 3060 is a *malum prohibitum* in which criminal intent need not be proved because it is presumed, while the offense punished in Article 201(3) of the Revised Penal Code is a *malum in se*, in which criminal intent is an indispensable ingredient.

Considering these differences in elements and nature, there is no identity of the offenses here involved for which legal jeopardy in one may be invoked in the other[5]. Evidence required to prove one offense is not the same evidence required to prove the other. The defense of double jeopardy cannot prosper. As aptly put in *People v. Doriquez*[6]:

"It is a cardinal rule that the protection against double jeopardy may be invoked only for the same offense or identical offenses. A single act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. (*People v. Bacolod*, 89 Phil. 621; *People v. Capurro*, 7 Phil. 24). Phrased elsewhere, where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other. (*People v. Alvarez*, 45 Phil. 472)[7]". (Emphasis supplied)

Petitioner also questions the propriety of allowing the accused in Criminal Case no. F-147348 to withdraw his plea of not guilty in order to file a motion to quash on the ground of double jeopardy. Petitioner argues:

"It is true that on February 3, 1973, the trial court finally convicted respondent Gonzales in Criminal Case No. F-147347 by imposing on him a fine of P600.00. But it is obvious that respondent Gonzales's conviction in that case cannot retroactively supply the ground for the dismissal of Criminal Case No. F-147348.

But even if conviction in Criminal Case No. F-147347 preceded the dismissal of Criminal Case No. F-147348, still that conviction cannot bar the prosecution for violation of article 201(3) of the Revised Penal Code, because, by pleading to the charge in Criminal Case No. F-147348 without moving to quash the information, the accused (now the respondent) Gonzales must be taken to have waived the defense of double jeopardy, pursuant to the provisions of Rule 117, section 10. (Barot v. Villamor, 105 Phil. 263 [1959]) It is only in cases where, after pleading or moving to quash on some other grounds, the accused learns for the first time that the offense of which he is charged is an offense for which he has been in jeopardy that the court may in its discretion entertain at any time before judgment a motion to quash on that ground. xxx In the case at bar, however, the fact is that the accused (now the respondent Gonzales) was arraigned in the same court. He, therefore, cannot claim ignorance of the existence of another charge against him for supposedly the same offense[8]".

Petitioner's argument is well-taken. Sec. 10, Rule 117, of the Rules of Court, before its amendment stated?

"SEC. 10. - Failure to move to quash - Effect of - Exception. - If the defendant does not move to quash the complaint or information before he pleads thereto he shall be taken to have waived all objections which are grounds for a motion to quash except when the complaint or information does not charge an offense, or the court is without jurisdiction of the same. If, however, the defendant learns after he has pleaded or has moved to quash on some other ground that the offense for which he is now charged is an offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court may in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction, acquittal or jeopardy". (Emphasis supplied)

However, it must be noted that, under the 1985 Rules, the provision now reads as follows:

"Failure to move or quash or to allege any ground therefor. The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of the grounds for a motion to quash, except the grounds of no offense charged, lack of jurisdiction, extinction of the offense or penalty, and jeopardy. xxx"[9]

The above, being an amendment favorable to the accused, the benefit thereof can be extended to the accused-respondent. However, whatever benefit he may derive from this amendment, is also illusory. For, as previously noted, there is no double jeopardy which gave rise to a valid motion to quash.

The People (petitioner) rightly appealed the dismissal of Criminal Case no. F-147348. For, as ruled in *People v. Desalisa*[10]

"As a general rule, the dismissal or termination of a case after arraignment and plea of the defendant to a valid information shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the complaint or information (Sec. 9. Rule 113). However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent, of the defendant, and (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be

remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant[11]".

WHEREFORE, the petition is granted. The appealed orders are hereby reversed and set aside. Criminal Case no. F-147348 is ordered reinstated and remanded to the respondent Court for trial according to law.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Paras, Feliciano, Bidin, Sarmiento, and Cortes, JJ., concur.

Gutierrez, Jr., J., concur but also joins J. Cruz in his reservations about R.A. 3060.

Gancayco, J., on leave.

[1] Const. (1973), Art. IV, Sec. 22: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law or an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same offense." Reiterated in the 1987 Constitution as Art. III, Sec. 21.

[2] Rule 117, Sec. 2 of the Revised Rules of Court states: "Motion to quash-Grounds - The defendant may move to quash the complaint or information on any of the following grounds: xxx (h) that the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged." Reiterated in the 1985 Rules on Criminal Procedure ("1985 Rules")

[3] As a matter of interest, sec. 3 of Rep. Act 3060 empowers the Board of Censors "[t]o screen, censor, examine and supervise the examination of, approve or disapprove or delete portions from, and/or prohibit the introduction and exhibition of motion pictures, imported or produced in the Philippines for non-theatrical, theatrical and television distribution which in its judgment are immoral, indecent, contrary to law, and/or good customs, or injurious to the prestige of the Republic of the Philippines and its people."

[4] In *People v. Padan*, 101 Phil. 749 (1957) the Court upheld the conviction of persons who exhibited and performed highly immoral and indecent acts before a crowd of one hundred persons who paid admission to see the performance.

[5] Cf. *People v. Relova*, G.R. No. L-45129, 6 March 1987

[6] G.R. No. L-24444-45, 29 July 1968, 24 SCRA 163

[7] *Id.* at 171

[8] *Rollo* at 59

[9] Rule 117, Sec. 8

[10] G.R. No. L-15516, Dec. 17, 1966, 125 Phil. 27 (1966). Not reported in *Supreme Court Reports Annotated* (SCRA).

[11] *Id.* at 43

People vs City Court of Manila : L-36528 : September 24, 1987 : J. Cruz : En Banc : Concurring Opinion Clean
Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable
{mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes;
mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt;

mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

CRUZ, J.:

I fully concur with the ponencia of Mr. Justice Teodoro Padilla but reserve judgment on Republic Act No. 3060, the validity of which is here presumed, until its constitutionality is squarely raised in an appropriate proceeding for a full examination of its effects on freedom of expression.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.