

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.  
JOSE LUIS ARCHILLA ALIAS CHINO SANTOS, ET AL., DEFENDANTS.  
ALFREDA ROBERTS, DEFENDANT AND APPELLEE.**

*G.R. No. L-15632. February 28, 1961*

Ponente: BAUTISTA ANGELO, J.

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**BAUTISTA ANGELO, J.:**

On March 6, 1959, defendants Jose Luis Archilla and Alfreda Roberts were charged with bigamy before the Court of First Instance of Quezon province as follows:

"That on or about the 26th day of May, 1958 in the Municipality of Lucena, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused Jose Luis Archilla alias Chino Santos, being previously united in lawful marriage with the undersigned Luz Mat Castro de Archilla, and without the said marriage having been legally dissolved, did then and there wilfully, unlawfully and feloniously contracted a second marriage with Alfreda Roberts, who likewise has previous knowledge that her co-accused Jose Luis Archilla's marriage with the undersigned is still valid and subsisting."

After entering a plea of not guilty Alfreda Roberts, through her counsel, filed a motion praying that the complaint be quashed with regard to her on the ground that the facts alleged therein do not constitute the offense charged. After the prosecution had filed its opposition, the court, in sustaining the motion, ruled:

"There being no allegation in the complaint that insofar as Alfreda Roberts is concerned, her marriage to Jose Luis Archilla was her second marriage, it is clear that she has committed no offense and should be discharged from the complaint. The allegation of the complaint that Alfreda Roberts 'who likewise has previous knowledge that her co-accused Jose Luis Archilla's marriage with the undersigned is still valid and subsisting' is not a sufficient, statement of an offense for which this defendant may be prosecuted and convicted."

The denial to reconsider the above order precipitated this appeal.

The prosecution contends that the lower court erred in quashing the information with regard to Alfreda Roberts because although it is not alleged therein that her marriage to her co-accused was her second the former being still valid, nevertheless, her act of contracting the second marriage with Archilla with knowledge of the fact that his former marriage was still valid constitutes an indispensable cooperation in the commission of bigamy which makes her responsible as an accomplice. But appellee contends that, even if that were true, the quashing of the information amounts to her acquittal which prevents the prosecution from taking an appeal as it would place her in jeopardy of being punished twice for the same offense. She prays that the appeal be dismissed on the ground of double jeopardy.

Granting arguendo that appellee may be prosecuted for bigamy as an accomplice under the information filed by the government prosecutor because it is alleged therein that she married her co-accused with knowledge of the fact that the latter was previously married and the marriage still subsisting and that it was error for the lower court to quash the information on the alleged ground that it does not allege all the elements necessary to constitute the

offense against appellee, the latter however cannot now be allowed to invoke the plea of double jeopardy after inducing the trial court to commit an error which otherwise it would not have committed. In other words, appellee cannot adopt a posture of double dealing without running afoul with the doctrine of estoppel. It is well settled that parties to a judicial proceeding may not, on appeal, adopt a theory inconsistent with that which they sustained in the lower court.[1] Consequently, appellee is now estopped from invoking the plea of double jeopardy upon the theory that she would still be convicted under an information which she branded to be insufficient in the lower court.

There is a parallelism between this case and that of *People vs. Acierto* (92 Phil., 534; 49 Off. Gaz., [2] 518). Acierto was accused before a U. S. Court Martial for having defrauded the government of the United States, thru falsification of a document within a military base of the United States in the Philippines. Despite his objection to the jurisdiction of said court, he was tried and convicted. On review, the sentence was reversed by the Commanding General, who did not sustain Acierto's conviction. Subsequently, accused of estafa and falsification of documents before one of our courts of first instance, Acierto was again convicted: On appeal to the Supreme Court, he raised the plea of former jeopardy and want of jurisdiction alleging that the authority that had jurisdiction to try his case was the Court Martial of the United States. In overruling this pretense this Court held:

"This is the exact reverse of the position defendant took at the military trial. As stated, he there attacked the court martial's jurisdiction, and thanks to his objection, so we incline to believe, the commanding general, upon consultation of, the Judge Advocate General in Washington, disapproved the court martial proceedings.

\* \* \* \* \*

"Construction of the United States Military Law by the Judge Advocate General or the United States Army is entitled to great respect, to say the very least. When such construction is a disclaimer of the jurisdiction under the Bases Agreement, the Philippine Government certainly is not the party to dispute it; the fewer the rights asserted by the United States the more is enhanced the dignity of the Philippines and its interest promoted.

"Irrespective of the correctness of the view of the Military authorities, the defendant was estopped from demurring to the Philippine court's jurisdiction and pleading double jeopardy on the strength of his trial by the court martial. A party will not be allowed to make a mockery of justice by taking inconsistent positions which if allowed would result in brazen deception. It is trifling with the courts, contrary to the elementary principles of right dealing and good faith, for an accused to tell one court that it lacks authority to try him and, after he has succeeded in his effort, to the court to which he has been turned over the first has committed error in yielding to his plea.

"From another angle, it seems immaterial whether or not the court martial had jurisdiction of the accused and his crimes under the terms of the Bases Agreement. Granting that it had, the Court of First Instance of Quezon City nevertheless properly and legally took cognizance of the cases and denied the defendant's motion to quash." (Italics supplied.)

With regard to the question whether under the information filed against appellee she can be prosecuted for bigamy even if it does not allege that her marriage to her co-accused is her second marriage, the authorities are clear that she can if it is averred that she married her co-accused knowing that the latter's former marriage is still valid and subsisting. (Viada, *Codigo Penal de 1870*, p. 561; *Francisco's Revised Penal Code, Annotated*, p. 1515, Part 2, Book II; *Guevara's Commentaries on the Revised Penal Code*, pp. 757-758.)

Wherefore, the order appealed from dated May 5, 1959 is set aside and the case remanded to the lower court for further proceedings. No costs.

Padilla, Labrador, Concepcion, Reyes, J. B. L., Paredes and Dizon, JJ., concur.

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[1] Williams vs. McMicking, 17 Phil., 408; Molina vs. Somes, 24 Phil., 49; Agoncillo vs. Javier, 38 Phil., 424; American Express vs. Natividad, 46 Phil., 208; Toribio vs. Decasa, 55 Phil., 416; San Agustin vs. Barrios, 68 Phil., 475; Jimenez vs. Bucoy, 103 Phil., 40; Northern Motors, Inc. vs. Prince Line, 107 Phil., 253; Medel vs. Calasanz, 109 Phil., 348.

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## DISSENTING OPINION

### BENGZON, ACTING C. J.:

I think the appeal should be dismissed, because appellee has already been once in jeopardy within the meaning of Rule 118, Sec. 2 and Rule 113, Sec. 9.

The information described an offense, as rightly found by the majority decision. Is the accused estopped, because she claimed in the court below that the information described no offense? With all due respect, I say no, because there is no estoppel on questions of law.

The Acierto case, wherein the accused was held to be in estoppel partly involved one question of fact; whether the accused was in the employ of the army.

And yet, if estoppel is to be applied, why not apply it to the people too? It claimed in the lower court that the information described an offense; and it should be held to that view.

The principle is invoked of impermissible change of Theories. But this accused is not changing her theory. She merely presents the issue of second jeopardy, which was not discussable in the court below. She maintained there was no offense. She still says so now. However, she argues, if the acts described an offense, this appeal may not be entertained, because it would be a second jeopardy.

My point is: she pleaded to a valid information; she may not be required to plead again through this appeal. That the dismissal was erroneous, is immaterial. What is the use of the protection against double jeopardy?

Supposing that the trial was had, that the prosecution proved that facts alleged in the information and that, thereafter, defendant moved for dismissal on the ground that no offense was committed because the facts did not constitute bigamy. Suppose further, that the judge (erroneously, as we find) dismissed the case upon that ground. May the fiscal appeal? No, undoubtedly according to U.S. vs. Yam Tung Way, 21 Phil., 67. The difference between such situation and this appeal is that here, no witness has testified; and yet that is immaterial because under Rule 113, sec. 9, the declaration of one witness is no longer essential for jeopardy to attach. (People vs. Ylagan, 58 Phil., 851.)

This decision, I believe, seriously dents the shield against double jeopardy which in a spirit of liberality, we have enlarged with Rule US, sec. 9, by eliminating the former "one-witness requisite." (See U. S. vs. Ballantine, 4 Phil., 672 and People vs. Ylagan, supra.)

For these reasons, I dissent.

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## DISSENTING OPINION

### **BARRERA, J.:**

I concur in the dissent of Justice Bengzon in that under the present prevailing interpretation of Rule 118, Section 2 and Rule 113, section 9, the appeal in this instant case constitutes a second jeopardy. There is no estoppel on the part of the accused because, as Justice Bengzon points out, she is not changing her theory, nor is she adopting "a posture of double dealing." Her attitude before this Court is entirely consistent with her stand in the lower court. She merely argues here that even if her theory is wrong, that the information does not charge an offense as to her which she still maintains, the appeal should be dismissed as it constitutes a second jeopardy. In my opinion, the *Acierto* case is clearly distinguishable from the present one. There the military court clearly had no jurisdiction over the accused under the terms of the U. S. Military Bases Agreement and *Acierto* was never, therefore, legally placed in jeopardy before the court martial.

This case and others that have come to the attention of this Court, where, on the technicality of a double jeopardy, an appeal by the People had to be dismissed, should serve as a reminder to trial courts that great care must be taken in dismissing informations on purely legal questions presented by the accused after his arraignment. Unless the point of law raised is undoubtedly well-settled in our jurisprudence, or is so clearly in accordance with law, the better part of discretion would seem to incline in favor of a denial where the accused could still bring up the issue on appeal upon consideration of the ease on the merits, rather than a dismissal, which would preclude the people from further pursuing the question and thereby may result in miscarriage of justice.

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