

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. GREGORIO G. PINEDA, BRANCH XXI, COURT OF FIRST INSTANCE OF RIZAL, AND CONSOLACION NAVAL, RESPONDENTS.*G.R. No. L-44205. February 16, 1993*

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6569290ad0d0/>**MELO, J.:**

When Consolacion Naval, the herein private respondent, was separately accused of having committed the crime of estafa in Criminal Case No. 15795 before Branch 19, and of falsification in Criminal Case No. 15796 before Branch 21, both of the then Court of First Instance of Rizal of the Seventh Judicial District stationed at Pasig, Rizal, she sought the quashal of the latter charge on the supposition that she is in danger of being convicted for the same felony (p. 16, Record). Her first attempt in this respect did not spell success (p. 34, Record) but the Honorable Gregorio G. Pineda, Presiding Judge of Branch 21 was persuaded to the contrary thereafter on the belief that the alleged falsification was a necessary means of committing estafa (p. 149, Record). It is this perception, along with the denial of the motion for re-evaluation therefrom (p. 66, Record) which the People impugns via the special civil action for certiorari now before Us.

The indictment for estafa against Consolacion Naval and her co-accused Anacleto Santos, reads:

"That on or about March 23, 1973 and soon thereafter, in the municipality of Pasig, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, by means of deceit and with intent to defraud, knowing that their parcel of land among others, situated in Malaking Bundok, Barrio Dolores, Taytay, Rizal, and more particularly described as follows, to wit:

"OJA No. 5851 Isang lagay na lupa (bulubundukin) na nasa lugar ng Malaking Bundok, Bo. Dolores, Taytay, Rizal, na may lawak na 14,615.5 metrong parisukat na may tasang P580.00 at may hanggahang gaya ng sumusunod: Hilagaan-Hermogenes Naval (now part of Rev. Tax Dec. 9284; Silanganan Nicolas del Rosario (now Jaime del Rosario); Timugan-Eduvigis, Consolacion, Apolinaria, Naval; Kanluran-Creek (sapang bato)"

was already sold and encumbered to one Edilberto V. Ilano as can be gleaned from a document entitled "Kasulatan ng Bilihan Ng Lupa Na May Pasubali O Condicion" sometime on August 12, 1969; and the latter having paid the partial amount of P130,850.00 to the herein accused and without informing said Edilberto V. Ilano, the herein accused Consolacion Naval executed and filed an Application for Registration over the same parcel of land among others, which document is designated as LRC Case No. N-7485, Consolacion, Eduvigis and Apolinaria, all surnamed Naval" of the Court of First Instance of Rizal, Pasig, Rizal, as a result of which the Presiding Judge of Branch XIII to which said case was assigned issued Original Certificate of Title No. 9332 in her name, which area was reduced to 10,075 sq. meters as appearing in item No. 2 in said OCT and subsequently referred to in TCT No. 370870 in favor of said accused Naval through Rodolfo Mendoza, sold more than one-half (1/2) of said parcel of land in her name in favor of Maria, Anacleto, Carmelo, Mariano, Cecilia and Teodorica, all surnamed Santos and Iluminada Tambalo, Pacita Alvarez and Pedro Valesteros which sales were registered and annotated with the Register of Deeds of Rizal at Pasig, Rizal; and likewise a

portion of which was partitioned to herein accused Anacleto Santos; that despite repeated demands the accused refused and still refuse to return said amount and/or fulfill their obligations under said "Kasulatan Ng Bilihan Ng Lupa Na May Pasubali O Condicion", to the damage and prejudice of said Edilberto V. Ilano in the aforementioned amount of P130,850.00" (pp. 44-45, Rollo)

while the charge for falsification narrates:

"That on or about the 17th day of August, 1971, in the municipality of Pasig, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then private individual did then and there willfully, unlawfully and feloniously falsify a public document by making untruthful statements in a narration of facts, committed as follows: the said accused on August 17, 1971, executed a document entitled "Application For Registration" for parcels of land located at Taytay, Rizal, to the effect that She is the exclusive owner in fee simple of a parcel of land situated in Malaking Bundok, Barrio Dolores, Taytay, Rizal with Psu-248206 and that she "does not know of any mortgage or encumbrance of any kind whatsoever affecting said land or that any person has estate or interest therein, legal or equitable, in possession remainder, reversion or expectancy", as a result of which the Court in its Decision of March 22, 1972 declared the herein accused the true and absolute owner of said parcel of land free from all liens and encumbrances of any nature, when in truth and in fact the herein accused has already sold and encumbered to one Edilberto V. Ilano said parcel of land referred to above as can be gleaned from a document entitled "Kasulatan Ng Bilihan Ng Lupa Na May Pasubali O Condicion" dated August 12, 1969 and said Edilberto V. Ilano has already paid partial amount of P130,850.00 to the herein accused.

"Contrary to law." (p. 2, Rollo)

The confluence of the foregoing assertions disclose that Consolacion Naval sold the subject realty on August 12, 1969 to Edilberto Ilano who made a partial payment of P130,850.00. About two years later, or on August 17, 1971, an application for registration under the Land Registration Act was submitted by Consolacion wherein she stated that she owned the same lot and that it was unencumbered. For those reasons, the corresponding title was issued in her name but she allegedly disposed of the half portion of the property to nine other persons.

These antecedents spawned the simultaneous institution of the charges on September 17, 1975.

On October 28, 1975, private respondent Consolacion Naval moved to quash the information for falsification, premised, among other things, on the apprehension that she is in danger of being condemned for an identical offense. The following day, Naval pleaded not guilty to the charge levelled against her for falsification (p. 22, Record) and on December 22, 1975, the court a quo denied her motion to quash (p. 34, Record).

As earlier intimated, the magistrate below thereafter reconsidered his order of denial which gave rise to the corresponding unsuccessful bid by the People for reinstatement of the information for falsification.

Hence the instant petition, which practically reiterates the same disquisition put forward in the proceedings below (p. 7, Petition; p. 47, Rollo).

The issue of whether the court below correctly quashed the information for falsification must be answered in the negative for the following reasons:

1. Assuming in gratia argumenti that falsification was indeed necessary to commit estafa, which ordinarily constitutes a complex crime under Article 48 of the Revised Penal Code and thus susceptible to challenge via a motion to quash under Section 2 (e), Rule 117 vis-a-vis Section 12, Rule 110 (Moran, Rules of Court, Vol. 4, 1980 Ed., p. 42; 230), still, it was serious error on the part of the magistrate below to have appreciated this discourse in favor of private respondent since this matter was not specifically raised in the motion to quash filed on October 28, 1975 (p. 16, Record). It was only in the motion for reconsideration where private respondent

pleaded this additional ground after her motion to quash was denied (p. 39, Record). The legal proscription against entertaining another saving clause to abate the charge for falsification is very explicit under Section 3, Rule 117 of the Revised Rules of Court:

"Sec. 3. Motion to quash - Form and contents - Failure to state objection - Entry of record - Failure to record. - The motion to quash shall be in writing signed by the defendant or his attorney: It shall specify distinctly the ground of objection relied on and the court shall hear no objection other than that stated in the motion. It shall be entered of record but a failure to so enter it shall not affect the validity of any proceeding in the case."

It must be observed that the denial of the motion to quash was re-examined not in the light of "res judicata dressed in prison grey" but on the aspect of whether falsification was supposedly perpetrated to commit estafa. The course of action pursued by the trial court in this context may not even be justified under Section 10 of Rule 117 which says that:

"Sec. 10. Failure to move to quash - Effect of Exceptions. - 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."

for the simple reason that the theory of a single crime advanced by private respondent in her belated; nay, "second" motion to quash couched as motion for reconsideration is not synonymous with "pardon, conviction, acquittal or jeopardy". In effect, therefore, respondent judge accommodated another basis for the quashal of the information albeit the same was not so stated in the motion therefor. This should not have been tolerated because it is anathema to the foregoing proviso (Moran, *supra*, at p. 283, citing *Suy Sui vs. People*, 49 O.G. 967). This caveat is now amplified in Section 8 of Rule 117 as amended, thus:

"SEC. 8. Failure to move to quash or to allege any ground therefore. - 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 of a motion to quash, except the grounds of no offense charged, lack of jurisdiction over the offense charged, extinction of the offense or penalty and jeopardy, as provided for in paragraphs (a), (b), (f) and (h) of Section 3 of this Rule."

At any rate, it is virtually unacceptable to suppose that private respondent concocted the sinister scheme of falsification in 1971 precisely to facilitate the commission of estafa in 1973 such that both crimes emanated from a single criminal impulse. Otherwise, an unfounded verisimilitude of this nature will run afoul with what this Court already observed in *People vs. Penas* (68 Phil. 533 [1939]; 1 Aquino, Revised Penal Code, 1976 Ed., p. 574) to the effect that the eleven estafas through falsification which the same accused therein committed between November 24, 1936 and January 3, 1937 including the falsification which he committed on January 8, 1937 were considered distinct offenses, not one complex crime, because they were committed on different dates, not to mention the discrepancy in places where they were accomplished.

In the same breath, it necessarily follows that the suspended hiatus, between 1971 and 1973 in the case at bar will not afford the occasion to buttress the unwarranted submission that the first is an integral part of or intimately interwoven with the second felony. A simple perusal of the two informations will disclose, and this cannot be gainsaid, that the recitals thereof radically differ with each other. The indictment for falsification allegedly

perpetrated in 1971 was levelled against private respondent because of the pretense in the application for registration of her exclusive dominion over a parcel of land notwithstanding the previous sale of the same lot in 1969 to Edilberto V. Ilano. By contrast, the inculpatory aspersions against private respondent in 1973 for estafa have their roots in the overt act of disposing the same piece of lot in favor of other persons subsequent to the conveyance in favor of Edilberto V. Ilano in 1969. Indeed, the intent to prevaricate on a piece of document for the purpose of securing a favorable action for registration within the context of Article 171 (4) in conjunction with Article 172 of the Revised Penal Code is definitely distinct from the perceived double sale contemplated by the first paragraph under Article 316 of the same code.

2. It was similarly fallacious for the lower court to have shared the notion that private respondent is in danger of being convicted twice for the same criminal act, a circumstance recognized under Section 2(h) Rule 117 of the Old Rules as suggested in the motion to quash, because this plea is understood to presuppose that the other case against private respondent has been dismissed or otherwise terminated without her express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant had pleaded to the charge (People of the Philippines versus Hon. Maximiano C. Asuncion, et al., G.R. Nos. 83837-42, April 22, 1992; Section 7, Rule 117, 1985 Rules on Criminal Procedure, as amended). In the Asuncion case, Justice Nocon said that:

“ . . . according to a long line of cases, in order that a defendant may successfully allege former jeopardy, it is necessary that he had previously been (1) convicted or (2) acquitted, or (3) in jeopardy of being convicted of the offense charged, that is, that the former case against him for the same offense has been dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant had pleaded to the charge.”

Withal, the mere filing of two informations charging the same offense is not an appropriate basis for the invocation of double jeopardy since the first jeopardy has not yet set in by a previous conviction, acquittal or termination of the case without the consent of the accused (People vs. Miraflores, 115 SCRA 586 [1982]; Nierras vs. Dacuycuy, 181 SCRA 8 [1990]).

In People vs. Miraflores (supra), the accused therein, after he had pleaded to the charge of multiple frustrated murder in Criminal Case No. 88173 and subsequent to his arraignment on a separate charge of Murder in Criminal Case No. 88174, invoked the plea of double jeopardy but Justice Barredo who spoke for the Court was far from convinced:

"But the more untenable aspect of the position of appellant is that when he invoked the defense of double jeopardy, what could have been the first jeopardy had not yet been completed or even began. It is settled jurisprudence in this Court that the mere filing of two informations or complaints charging the same offense does not yet afford the accused in those cases the occasion to complain that he is being placed in jeopardy twice for the same offense, for the simple reason that the primary basis of the defense of double jeopardy is that the accused has already been convicted or acquitted in the first case or that the same has been terminated without his consent. (Bulaong vs. People, L-19344, July 27, 1966, 17 SCRA 746; Silvestre vs. Military Commission No. 21, No. L-46366, March 8, 1978, Buscayno vs. Military Commissions Nos. 1, 2, 6 and 25, No. L-58284, Nov. 19, 1981, 109 SCRA 273)."

Moreover, it appears that private respondent herein had not yet been arraigned in the previous case for estafa. Thus, there is that other missing link, so to speak, in the case at bar which was precisely the same reason utilized by Justice Davide, Jr. in Lamera vs. Court of Appeals (198 SCRA 186 [1991]) when he brushed aside the claim of double jeopardy of the accused therein who was arraigned in the previous case only after the judgment of conviction was promulgated in the other case. The ponente cited a plethora of cases in support of the proposition that arraignment of the accused in the previous case is a condition sine qua non for double jeopardy to attach (at

page 193: *People vs. Ylagan*, 58 Phil. 851; *People vs. Consulta*, 70 SCRA 277; *Andres v. Cacdac*, 113 SCRA 216; *People vs. Bocar, et al.*, 132 SCRA 166; *Gaspar vs. Sandiganbayan*, 144 SCRA 415) and echoed the requisites of legal jeopardy as announced in *People vs. Bocar*, thus:

"Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered, and (e) the case was dismissed or otherwise terminated without the express consent of the accused." (at p. 193.)

To be sure, Chief Justice Moran said in his treatise on the subject under consideration that:

"Where there is no former conviction, acquittal, dismissal or termination of a former case for the same offense, no jeopardy attaches." (Comments on the Rules of Court, by Moran, Vol. 4, 1980 Ed., p. 281)

Of course, We are not unmindful of the erudite remarks of Mr. Justice Florenz D. Regalado, in his Remedial Law Compendium that:

"It would now appear that prior conviction or acquittal in the first case, as long as the accused had entered his plea therein is no longer required in order that the accused may move to quash a second prosecution for the same offense on the ground of double jeopardy." (Volume 2, 1988 Edition, page 323; 339)

x x x

x x x

"Jeopardy attaches from the entry of his plea at the arraignment (*People vs. City Court of Manila, et al.*, L-3642, April 27, 1983)." (Vide page 327).

The sentiments expressed in this regard by Our distinguished colleague which rest on the ruling of this Court in *People vs. City Court of Manila, Branch XI* (121 SCRA 637 [1983], cited by Regalado, Vide, at p. 339 to the effect that jeopardy would already attach when the accused enters his plea was due to the obiter dictum of the ponente in that case, based on the following factual backdrop:

"The question presented in this case is whether a person who has been prosecuted for serious physical injuries thru reckless imprudence and convicted thereof may be prosecuted subsequently for homicide thru reckless imprudence if the offended party dies as a result of the same injuries he had suffered."

x x x

"In the case at bar, the incident occurred on October 17, 1971. The following day, October 18, an information for serious physical injuries thru reckless imprudence was filed against private respondent driver of the truck. On the same day, the victim Diolito de la Cruz died.

"On October 20, 1972, private respondent was arraigned on the charge of serious physical injuries thru reckless imprudence. He pleaded guilty, was sentenced to one (1) month and one (1) day of arresto mayor, and commenced serving sentence.

"On October 24, 1972, an information for homicide thru reckless imprudence was filed against private respondent.

"On November 17, 1972, the City Court of Manila, upon motion of private respondent, issued an order dismissing the homicide thru reckless imprudence case on the ground of double jeopardy."

where it was opined, thus:

"Well-settled is the rule that one who has been charged [implying that there is no need to show previous conviction, acquittal, or dismissal of a similar or identical charge] with an offense cannot be charged again

with the same or identical offense though the latter be lesser or greater than the former." (Emphasis supplied.)

From the conclusion thus reached, it would appear that one simply "charged" may claim possible jeopardy in another case. However, a closer study of the case adverted to reveals that the ponente may have overlooked the fact that the accused therein was not only charged, but he actually admitted his guilt to the charge of serious physical injuries through reckless imprudence and more importantly, he was convicted of such crime and commenced serving sentence. Verily, there was no occasion in said case to speak of jeopardy being properly invoked by a person simply charged with an offense if he is again charged for the same or identical offense. It may be observed that in City Court of Manila the accused therein pleaded on the first offense of which he was charged and subsequently convicted, unlike in the scenario at bar where private respondent entered her plea to the second offense. But the variance on this point is of no substantial worth because private respondent's plea to the second offense is, as aforesaid, legally incomplete to sustain her assertion of jeopardy for probable conviction of the same felony, absent as there is the previous conviction, acquittal, or termination without her express consent of the previous case for estafa, and it being plain and obvious that the charges did not arise from the same acts. In short, in order for the first jeopardy to attach, the plea of the accused to the charge must be coupled with either conviction, acquittal, or termination of the previous case without his express consent thereafter. (Tolentino vs. De la Costa, 66 Phil. 97 [1938]). Justice Oscar Herrera, in his book "Remedial Law" enumerates the elements constitutive of first jeopardy, to wit:

- "1. Court of competent jurisdiction;
2. Valid complaint or information;
3. Arraignment and a
4. Valid plea (People vs. Ylagan, 58 Phil. 851; 853)
5. The defendant was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused (People vs. Declaro, G.R. No. 64362, February 9, 1989, 170 SCRA 142; See also People vs. Santiago, 174 SCRA 143; People vs. Gines, G.R. No. 83463, May 27, 1991, 197 SCRA 481; Que vs. Cosico, 177 SCRA 410 [1989]; Caes vs. Intermediate Appellate Court, 179 SCRA 54; Lamera vs. Court of Appeals, 198 SCRA 186 [1991])." (Herrera, Remedial Law, 1992 Ed., Volume 4, p. 417).

Citing cases, both old and of recent vintage, Justice Herrera continues to submit the idea that:

"The first jeopardy is said to have validly terminated upon conviction, acquittal or dismissal of the case or otherwise terminated without the express consent of defendant (People vs. Garcia, 30 SCRA 150; People vs. Ledesma, 73 SCRA 77; People vs. Pilpa, 79 SCRA 81; Buscayno vs. Military Commission, 109 SCRA 273; People vs. Cuevo, 104 SCRA 319; Galman, et al. vs. Sandiganbayan, G.R. No. 72670, September 12, 1987.)" (Vide, at page 423).

In People vs. Ledesma (73 SCRA 77 [1976]), Justice Martin declared in no uncertain terms:

". . . In the case before Us, accused-appellee was charged with estafa in Criminal Case No. 439 before a competent court under a valid information and was duly convicted as charged. He was therefore placed in legal jeopardy for the crime of estafa in Criminal Case No. 439 for having failed to turn over the proceeds of the sale of an Avegon radio in the amount of P230.00 to the offended party. x x x" (at p. 81)

The same observation was made by then Justice, later Chief Justice Aquino in People vs. Pilpa (79 SCRA 81 [1977]):

"In synthesis, there is former jeopardy when in the first case there was a valid complaint or information filed in a court of competent jurisdiction, and after the defendant had pleaded to the charge, he was acquitted or convicted or the case against him was terminated without his express consent (People vs. Consulta, L--41251, March 31, 1976, 70 SCRA 277; People vs. Ylagan, 58 Phil. 851, 853)." (86)

At any rate, and inasmuch as this Court has spoken quite recently in *People vs. Asuncion*, (G.R. Nos. 83837-42, April 22, 1992), the ambiguity stirred by the imprecise observation in *People vs. City Court of Manila*, a 1983 case, can now be considered modified in that a prior conviction, or acquittal, or termination of the case without the express acquiescence of the accused is still required before the first jeopardy can be pleaded to abate a second prosecution.

While We are at a loss as to the status of the progress of the estafa case on account of private respondent's apathy towards Our order for the parties herein to "MOVE IN THE PREMISES" (p. 125, Rollo) which information could substantially affect the results of this case, from all indications it appears that the estafa case has not yet been terminated.

WHEREFORE, the petition is GRANTED and the Orders of respondent judge dated January 23, 1976 quashing the information for falsification, and March 23, 1976 denying the People's motion for reconsideration therefrom are hereby REVERSED and SET ASIDE. Let the information for falsification be reinstated and this case be remanded to the lower court for further proceedings and trial. No special pronouncement is made as to costs. SO ORDERED.

Cruz, Padilla, Bidin, Griño-Aquino, Davide, Jr., Romero, Nocon, Bellosillo, and Campos, Jr., JJ., concur.
Narvasa, C.J., and Feliciano, J., joins J. Regalado in his concurring and dissenting opinion.
Gutierrez, Jr., J., on terminal leave.
Quiason, J., no part.

CONCURRING AND DISSENTING OPINION
REGALADO, J.:

I concur in the result reached in the eloquently articulated and well researched ponencia of Mr. Justice Melo in that the assailed order of respondent judge quashing the information for falsification should be reversed and the case be remanded to the lower court for appropriate proceedings. I regret, however, that some of the reasons advanced for that conclusion do not square with my own views as I shall shortly explain.

1. First, on the concessible areas of concurrence. The majority holds that private respondent Consolacion Naval failed to seasonably raise the issue, and respondent judge correspondingly erred in declaring, that she was supposedly being prosecuted for falsification perpetrated to commit estafa. The specific contention of the accused that she was charged with the complex crime of estafa through falsification, in connection with her submission on double jeopardy, was allegedly not raised in a motion to quash but only subsequently in a motion for reconsideration of the denial of the preceding motion, hence under the omnibus motion rule expressed in Section 3, Rule 117 of the 1964 Rules of Court that ground was waived and could not be made the basis for the quashal complained of.

To be more accurate, however, the accused did raise in her basic motion to quash filed on October 28, 1975 in Criminal Case No. 15796, not with the desirable explicitness required by the rules on pleadings but acceptable under a liberal application thereof, the issue of double jeopardy in this wise:

"3. That accused is in jeopardy of being convicted for a similar offense that is pending in court.

Attached to this motion is a zerox copy of the information in Criminal Case No. 15795, CFI Rizal, which alleges the identical fact of giving alleged false testimony in the land registration proceedings that is alleged in the information before this Honorable Court. The defense of jeopardy is applicable not only to a situation where the accused has in fact been convicted but also to a situation where he is in danger of being convicted for the same offense." [1]

At any rate, I would go a little farther, beyond that mere procedural lapse, especially since the main decision took recourse to that bar under the Rules prefaced by the assumption "in gratia argumenti that falsification was indeed necessary to commit estafa." During the deliberations in this case, I advanced the view that even under substantive law, specifically the provisions of and the jurisprudence on Article 48 of the Revised Penal Code, the offenses of which private respondent stands charged cannot be considered together as component offenses constitutive of a single complex crime. I am gratified that in the revised ponencia, the majority now shares my position.

Private respondent was charged on the same day with estafa in Criminal Case No. 15795 before Branch 19, and with falsification in Criminal Case No. 15796 before Branch 21, both of the then Court of First Instance of Rizal. From the indictments in these two cases which are reproduced in the decision, the majority notes that "(t)he confluence of the foregoing assertions disclose that Consolacion Naval sold the subject realty on August 12, 1969 to Edilberto Ilano who made a partial payment of P130,850.00. About two years later, or on August 17, 1971, an application for registration under the Land Registration Act was submitted by Consolacion wherein she stated that she owned the same lot and that it was unencumbered. x x x."

The foregoing allegations constitute the basis for the falsification charge for, as the information therein states, because of her aforesaid representations that "(s)he is the exclusive owner in fee simple" of the land and that she "does not know of any mortgage or encumbrance of any kind whatsoever affecting said land, x x x the Court in its Decision of March 22, 1972 declared the herein accused the true and absolute owner of said parcel of land free from all liens and encumbrances of any nature x x x."

On the other hand, the charge for estafa in Criminal Case No. 15795 alleges that on or about March 23, 1973, private respondent and one Anacleto Santos, "without informing said Edilberto V. Ilano, x x x executed and filed an Application for Registration over the same parcel of land among others, as a result of which the Presiding Judge of Branch XIII to which said case was assigned issued Original Certificate of Title No. 9332 in her name, x x x" and "sold more than one-half (1/2) of said parcel of land" to nine (9) other persons named therein.

In his challenged order^[2] rendered on January 23, 1976 quashing the information in the falsification case (Criminal Case No. 15796), and with express reference to the "information for estafa x x x previously filed against the accused, docketed as Criminal Case No. 15795 assigned to Branch XIX of this Court," respondent judge arrived at the following conclusion:

"This Court, therefore, finds the contention of the accused that the crime of falsification charged in the present case and the estafa case pending in Branch XIX of this Court constitute the so-called complex crime. The falsification charge in the case at bar was the means for committing the crime of estafa now pending in Branch XIX. In justice to the accused considering that if this case should not be dismissed she stands in danger of being convicted twice for the same criminal act that she allegedly committed, this court is constrained to grant the motion for reconsideration."^[3]

I regret that I cannot follow the logic in the aforesaid disposition. The falsification charged in Criminal Case No. 15796 was allegedly committed on August 17, 1971 with an application for land registration containing false statements. No private offended parties, other than Edilberto Ilano, were contemplated therein since no other sales of the land or portions thereof were alleged to have been effected. On the other hand, the estafa charged in Criminal Case No. 15795 was supposedly committed almost two (2) years later, on March 23, 1973, allegedly by the filing of another application for registration of parts of the same parcel of land, portions of which were thereafter sold to nine (9) other persons who would be the potential aggrieved parties. It is hard to conceive of how a falsification committed in 1971 which, at that time, had no probable or direct connection with the estafa committed in 1973, could be considered as the necessary means to commit the latter such that both could be considered a single complex crime.

In this type of complex crime under Article 48 of the Revised Penal Code known in Spanish law as a delito complejo, there must be a direct connection, both in point of time and intention, that the first felony committed by the offender was deliberately adopted by him as a necessary means to commit the other. That singularity of purpose, or unity of criminal intent, is the basis for penalizing both offenses with a single penalty, albeit in the maximum period of that for the graver offense, since this is the so-called case of formal or ideal plurality of crimes which is generated by a single criminal resolution.[4]

Thus, in *Regis vs. People*,[5] we stressed:

"x x x The statement in the appealed decision that there was only one intention to commit the falsification and the malversation of April 30 and May 2, 1931 is not supported by the facts of the case. They were committed on different dates sufficiently distant from each other (April 30 and May 2, 1931). It does not appear that when the malversation and the falsification were committed on April 30, it was already the intention of the appellant to commit also the falsification and the malversation of May 2, 1931, the same being necessary to justify the finding that, although they were committed on different dates, a single intention determined the commission of both. The acts being independent from each other and executed by different voluntary actions, each constitutes an independent offense."

While the foregoing discussion may also apply to plurality of complex crimes committed on different dates, the rationale is the same. As already emphasized, there must be an evident nexus between the first and the second felonies, in that the first was resorted to precisely to ensure the commission and in anticipation of the second. Here, it defies sober analysis as to how the falsification in 1971 and the estafa in 1973 could be the component felonies of a single complex crime.

On both procedural and substantive legal considerations, therefore, I hold that public respondent erred in quashing the information for falsification on the theory that, together with the estafa, a complex crime is involved, hence to charge private respondent in two separate criminal cases using each offense as the respective subject of each charge would put her in double jeopardy.

Private respondent, under the factual milieu of this case, cannot be in double jeopardy. She is being charged with two separate and distinct crimes. On top of that, the thesis of the majority is that she even failed to duly raise the issue of A complex crime vis-a-vis the rule of double jeopardy in the manner which public respondent seized upon for the quashal of Criminal Case No. 15796. We could, therefore, stop here and write finis to the posturings of private respondent in this recourse, leaving the inquiry into the case on the merits to the court a quo. The majority, however, discourses on certain aspects of the doctrine of double jeopardy which, although obiter in light of the foregoing premises, warrants more than just the proverbial second look and on which I would like to make some respectful observations.

2. It is the postulation of the majority that "(t)he mere filing of two informations charging the same offense is not an appropriate basis for the invocation of double jeopardy since the first jeopardy has not yet set in by a previous conviction, acquittal or termination of the case without the consent of the accused." This would be correct if what had transpired was the mere filing of the two informations charging identical offenses, but what about the situation where the accused has already entered a plea to the first charge and is now confronted with a second charge for the same offense? To this, the majority ripostes that "in order for the first jeopardy to attach, the plea of the accused to the charge must be coupled with either conviction, acquittal, or termination of the previous case without his express consent thereafter."

In fine, what the majority posits is that the doctrine of double jeopardy can be invoked only if there was a previous conviction, acquittal, or unconsented dismissal in the first case against the accused and he is now charged again with the same offense. Ergo, even if he was already arraigned on the first charge, or even if he was

undergoing trial therein when the same offense is made the subject of a second charge, he cannot, for lack of a prior conviction, acquittal or unconsented dismissal in the first charge, move to quash the second identical indictment on the ground of double jeopardy since putatively there is still no first jeopardy to speak of.

This will necessitate an inquiry into and require clarification as to stage of or point in time in the criminal proceedings when an accused is considered as already in legal jeopardy or in danger of conviction either for the first or second time. Since our basic rules on double jeopardy are admittedly of American judicial origin, the rulings in that jurisdiction would be instructive. We find these annotations in *Corpus Juris Secundum*:

"The general rule established by, the preponderance of judicial opinion and by the best considered cases is that, when a person has been placed on trial on a valid indictment or information before a court of competent jurisdiction, has been arraigned, and has pleaded, and a jury has been impaneled and sworn, he is in jeopardy, but that, until these things have been done, jeopardy does not attach." [6]

x x x

"If jeopardy is considered to attach when the jury are sworn or when the first witness is heard, it is not ordinarily necessary that the prior trial shall have resulted in a valid judgment either of conviction or acquittal; it is sufficient if the prisoner was actually placed in jeopardy in that he was in danger of having a valid judgment pronounced as the result of the trial; it is not the verdict or judgment which places a prisoner in jeopardy.

"In those jurisdictions which follow the generally recognized rule, jeopardy attaches at the time the trial commences, and if the trial is to a jury, the trial commences when the jury are impaneled and sworn, and thus it is said that jeopardy attaches when the jury are impaneled and sworn. If the trial is to the court without a jury, it is well settled that, for the purpose of determining when jeopardy attaches, the trial begins at the time of the commencement of the taking of testimony, that is, when the first witness is duly sworn, and, accordingly, in such a case, jeopardy begins after accused has been indicted, arraigned, and has pleaded, and the court has begun to hear the evidence, or the trial has begun by the reading of the indictment to the court. In the application of these principles it is assumed that there has been a plea of not guilty, and that the court has jurisdiction." [7] (Underscoring supplied).

The doctrine above discussed to the effect that the accused is in legal jeopardy from the moment he enters a valid plea to the indictment is not *terra incognita* in our jurisdiction.

As early as 1933, in applying Section 28 of the then Code of Criminal Procedure which was substantially incorporated in Section 9, Rule 117 of the 1964 Rules of Court (now Section 7, Rule 117 of the 1985 Rules of Criminal Procedure), this Court, with minor allowances for our procedural differences with criminal proceedings in American jurisdiction, substantially reiterated the above-quoted doctrines as a basic proposition of law.

"It seems clear that under the foregoing provisions of law, a defendant in a criminal prosecution is in legal jeopardy when placed on trial under the following conditions: (1) In a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he has been arraigned; and (4) after he has pleaded to the complaint or information. Tested by this standard, we are of the opinion that the appellee has been once in jeopardy for the offense for which she is now prosecuted. x x x All that the law requires is that the accused has been brought to trial 'in a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, after issue properly joined.' Under our system of criminal procedure, issue is properly joined after the accused has entered a plea of not guilty. The mere calling of a witness would not add to the danger, annoyance, and vexation suffered by the accused, after going through the process of being arrested, subjected to preliminary investigation, arraigned and required to plead and stand trial." [8] (Emphasis mine.)

This is reiterated and clarified by a recognized authority who explains that legal jeopardy exists from the moment the accused has pleaded to the charge, and that the disposition of his case thereafter is merely the consequence of the former as to constitute a bar to another prosecution, thus:

"x x x, legal jeopardy does not exist and a plea to that effect is not accordingly available but under the following conditions: (a) upon a valid complaint or information: (b) before a court of competent jurisdiction; and (c) after he has been arraigned and has pleaded to the complaint or information. When all of these conditions are shown to exist, the subsequent acquittal or conviction of the accused, or the dismissal or termination of the case without his express consent constitutes *res adjudicata* and, therefore, 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 included therein." [9]

In other words, the concurrence of the three conditions above enumerated having placed the accused in legal jeopardy, he can invoke the ground in Section 3(h) of the present Rule 117; and after judgment has been rendered therein, the ground for quashal is furnished by Section 7 of the same rule which speaks of previous conviction, acquittal or unconsented dismissal. Parenthetically, the overriding significance of a plea is underscored when we recall that after a plea has been entered, there can be no amendment in substance of the information or complaint, but only in form and this by leave and at the discretion of the court if it can be done without prejudice to the accused.[10] And, of course, it is fundamental that there can be no valid judgment without a valid standing plea to the charge.[11]

It is regrettable that the role of a plea entered to an indictment appears to have been denigrated in our decisional rulings on double jeopardy. While in almost all cases decided by the Court double jeopardy was sustained because of a previous conviction, acquittal or dismissal of the case without the consent of the accused, these were so because the facts thereof really made out in each a case of *autrefois acquit* or *autrefois convict*. In addition, with the specific provision of then Section 9 (now Section 7) of Rule 117 providing for the requirements, and under the heading of "Former conviction or acquittal or former jeopardy" (now rephrased as such epigraph reading "Former conviction or acquittal; double jeopardy."), the impression created was that the doctrine of double jeopardy can be invoked only if there was prior conviction, acquittal or dismissal of the case involving the same offense of which the accused is charged again. The writer respectfully submits otherwise.

It has long been my position that the issue of double jeopardy arises in three different ways, that is, when: (a) the accused is charged with the same offense in two separate pending cases, in one of which he has validly pleaded; (b) The accused is prosecuted anew for the same offense after he has been previously convicted or acquitted thereof or the charge therefor had been dismissed without his consent; or (c) the prosecution makes a legally unauthorized appeal from a judgment in the same case. The first instance is contemplated in then Section 2 (now Section 3), paragraph (h), Rule 117; the second is covered by Section 7 of the same Rule; and the third is governed by Section 2, Rule 122.

That the first and the third instances are rarely involved in cases or found in our jurisprudential annals is to the credit of our prosecutorial agencies which, with respect to the first instance, can seldom be faulted with simultaneously or successively charging the same person twice with the same offense in separate cases and, regarding the third instance, of scrupulously avoiding the proscribed appeals. Evidently, this is not to be construed to mean, however, that only the second instance, or "former jeopardy," can be the basis of a motion to quash.

Section 3 of Rule 117 provides the ground for a motion to quash and, just like the provisions of the 1964 Rules of Court, includes therein as paragraph "(h) That the accused has been previously convicted or in jeopardy of being convicted or acquitted of the offense charged." Indisputably, the first part of this paragraph regarding previous conviction refers to the "former jeopardy" embraced in the present Section 7 of this Rule.

Now, unless we are prepared to treat the second part therein as faulty drafting or linguistic surplusage, that second part referring to the accused as "in jeopardy of being convicted or acquitted of the offense charged" necessarily presupposes that he has not yet been convicted or acquitted of an offense identical to that with which he is again indicted. Since double jeopardy requires, aside from the other requisites, at least two cases involving identity of offenses but wherein the accused is in legal jeopardy in at least one of them, this consequently envisages the situation where the accused, who has already entered a plea to the first charge but wherein no final adjudication has yet been rendered, is again charged with the same offense. It is, to paraphrase from the American expression quoted in the main opinion, a proper case of "litis pendentia in prison grey" and wherein quashal of the second case may accordingly be sought pursuant to said Rule.

Spelled out to the point of elemental details, said paragraph (h) actually provides for two modes constitutive of separate grounds for quashal of a second indictment for the same offense. Recasting its provisions for greater clarity, the first mode allows quashal where the accused has been previously convicted or acquitted of the same offense with which he is again presently charged and in danger of a second conviction. This would correspond, in civil procedure, to *res judicata* as a ground for dismissal. The second mode stated in the same paragraph contemplates the situation where the accused is only in jeopardy or danger of being convicted in the first case, since no judgment or final order has yet been rendered therein, and he is now charged anew with the same offense. This is equivalent, in civil cases, to *litis pendentia* or *auter action pendant*, likewise a ground for dismissal.

Now, in criminal procedure, these two variant grounds are provided for in a single paragraph but definitely not as identical, but alternative and discrete, grounds although embraced in the same concept of double jeopardy. While the censorious would prefer a more felicitous term for the second mode, instead of also referring to it as double jeopardy, this is a matter properly addressed to the framers of the rule or law thereon. I can very well live with that term since, whether or not the liability of the accused has been adjudged or still awaiting adjudication in the first prosecution, what is sought to be avoided is his subjection to another danger or jeopardy of being again convicted and sentenced for an identical offense.

Judicial proceedings and determinations should never be the victims of the tyranny of labels. What should control is the legislative intent and the purpose to be subserved. If we were to be squeamish about terminology, we need merely note that improper venue is not a ground for a motion to quash. Its counterpart in criminal procedure is lack of jurisdiction of the trial court over the offense charged, under Section 3(b) of Rule 117, since in criminal cases venue is jurisdictional as the court has no jurisdiction to try an offense committed outside its territorial jurisdiction.[12] Yet, we still have to hear any strident objection to the practice equating both terms as virtually synonymous objections to the validity of a criminal prosecution.

Coming back to my preceding disquisition on double jeopardy, I humbly submit that a view contrary thereto could be productive of mischievous, if not preposterous, results. While, as earlier observed, it is a little remote for the same authority to charge the same accused with two criminal suits involving the same offense, this is not an absolute improbability, as witness politically-motivated harassment prosecutions. It is also possible that duplicity of suits on identical offenses may be brought about by acts of different authorities in separate local jurisdictions.

Thus, to illustrate,[13] if forcible abduction is committed and commenced in Manila and the victim is taken to Tarlac and thence to Cagayan, being a continuing crime the criminal action therefor may be instituted in the proper court of any province in which the offense is continued. If, by error or design, three cases involving the same parties and offense are lodged in Manila, Tarlac and Cagayan, either categorized under the same offense of forcible abduction or with two of them dissembled as different offenses of arbitrary detention or grave coercion through the expedient of variations in the particulars of the indictment, we would have the not improbable

scenario of the same accused enmeshed in three different criminal actions which actually involve the same offense.

Where, thereafter, the accused upon arraignment pleaded not guilty in Manila, it would be a judicial travesty that for lack of a final disposition in said case he cannot be allowed to move to quash the other two pending cases on the ground of double jeopardy, in the hearing of which motion the identity of the offenses can be proved and the dismissal of the other two actions could accordingly be ordered.

Again, since the majority insists that a final judgment in the first case is a sine qua non for a motion to quash the other two cases, if the accused was convicted in the first case and said conviction is brought on appeal where it may remain pending for years, what happens to the other two cases? Shall they instead be consolidated for trial with the inevitable inconvenience and expenses necessitated by transfer of venue and production of witnesses from a different vicinage, not to speak of the awkward and improbable situation of two of the same cases being each consolidated with itself and with the court having to resolve all? Shall they be allowed to proceed on independent trial utilizing the same evidence or shall the proceedings therein be indefinitely suspended to await the ultimate outcome of the first?

The absurdity of having to be unnecessarily confronted with the aforesaid options is further underscored by the fact that howsoever the first case is disposed of, the other two cases would be barred by previous jeopardy under Section 7 of Rule 117, hence the independent proceedings that may have been conducted or the suspension thereof in those two cases would be completely pointless and unnecessary. Permitting the accused to move to quash the said two cases after he had pleaded to the first would have obviated the impasse created by requiring a prior final decision and spared him the vexation and expenses for fees and bail in the other two improvident prosecutions. This is where Section 3(h) of the same rule could have played its intended role which, unfortunately, appears to have been overlooked, misconstrued, or altogether ignored.

One final word. The majority points out that it was obiter for the Court to rule in *People vs. City Court of Manila Branch XI*.^[14] that the accused therein was in double jeopardy because he had already been charged for the same offense, emphasizing that such imprecision of language would give the impression that one simply charged may claim possible jeopardy in another case. This writer is aware that the ponente therein committed an innocent oversight hence in my comment thereon, as quoted in the main decision, it was explained that this would be so as long as the accused had entered his plea therein. Aware that such statement in that case could further be, as it is now, blandly dismissed as obiter, I also made the qualification that my comment was as the doctrine "would now appear" based on the holding in said case.

Yet, as a statement of a rule of procedure, I believe that, properly and completely expressed, the view of the ponente in that case was in the right direction on that score. Also, we have held that while an obiter dictum is generally not binding as authority or precedent within the state decisis rule, it may be followed if sufficiently persuasive.^[15] I make this observation since it may also be argued that the present discussion regarding the bases of my dissent would be obiter if we hold that in the present case the issue of double jeopardy is not really involved since the private respondent is not being charged with a complex crime, the component felonies of which have been made the subject of separate suits, but of two distinct and independent crimes.

Nonetheless, as ultimate arbiters of the law, we cannot and we should not continue to cleave with obstinate tenacity or persist in citing with rote-like consistency clearly inapposite or inapplicable doctrines catalogued in works notable not for logical analysis but by their reliance on the numerical weight of cases decided on the bases of disparate factual situations, or by reason of a slavish obsession for footnotes. Perpetuating a misconception spawned by the inertia of cavalier reliance on supposed precedents is a disservice to the doctrine of stare decisis.

As earlier stated, therefore, since my present dissent is on an issue which I believe this Court should soonest clarify, on the considerations hereinbefore expressed. I categorically submit that where an accused has validly pleaded to the appropriate indictment sufficiently charging him with an offense in a court of competent jurisdiction, he can seek and obtain the quashal of a subsequent charge for the same offense on the ground of double jeopardy even before the final disposition of the first case.

[1] Rollo, 4-5.

[2] Ibid., 66.

[3] Ibid., 70-71.

[4] See Gamboa vs. Court of Appeals, et al., 68 SCRA 308 (1975).

[5] 67 Phil. 1938 (1938).

[6] 22 C.J.S., Criminal Law 637.

[7] Op. cit., 639-640.

[8] People vs. Ylagan, 58 Phil. 851 (1933).

[9] Moran, Comments on the Rules of Court, Vol. IV, 1980 Ed., 240.

[10] Sec. 14, Rule 110, Rules of Court.

[11] People vs. Balisacan, 17 SCRA 119 (1966); People vs. Padernal, 21 SCRA 34 (1967).

[12] People vs. Mercado, 65 Phil. 665 (1938); Alfelor, et al. vs. Intia, et al., 70 SCRA 460 (1976).

[13] The observations here could also very well apply to the case of libel wherein the criminal action can be filed in specified regional trial courts of different provinces as alternative venues (Art. 360, Revised Penal Code, as amended by R.A. No. 4363).

[14] 121 SCRA 637 (1983).

[15] Lee, et al. vs. Court of Appeals, et al., 68 SCRA 196, 204 (1975).

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