

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. OSCAR SALICO, DEFENDANT AND APPELLEE.

G.R. No. L-1567. October 13, 1949

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/74bcbbff484e/>

FERIA, J.:

This is an appeal by the Provincial Fiscal from the order of the Court of First Instance of Occidental Negros union, upon the petition of the defendant before the latter has presented his evidence, dismissed the criminal action against the defendant charged, with homicide on the ground that the fiscal was not able to prove that the offense was committed within the territorial jurisdiction of the court, or that the town or Municipality of Victorias in which it was committed is within the province of Occidental Negros.

It is obvious that the lower court erred in not taking judicial notice as it ought to of the political subdivisions or municipalities of the province of Occidental Negros, that is, that the municipality or town of Victorias was within that province, and therefore the offense charged was committed, within the jurisdiction of the Court of First Instance of Occidental Negros. Juan Jardiman, the principal witness for the prosecution, testified in part as follows:

"Juan Jardiman, after being duly sworn to, states that he is 25 years old, married, laborer, and resident of Hda. Loreto, Municipality of Victorias, Province of Negros Occidental.

"FISCAL ENCARNACION-(Direct Exam.)

"Q: In the evening of March 1, 1947, where did you go if you went somewhere?—A: I went to the town of Victorias in the public market.

"Q: When you returned, did you have any companion?—A: While I was going back to the hacienda, I passed by Delfin Abecilla at around 11:30 in the evening because he went to the show, and we went home together.

"Q: Then, while you were walking, what happened?—A: While we were on our way home and we reached the bridge of Mangnanod, I went a little bit ahead of Delfin and on the crossing of the road going to the old town site of Victorias, I saw Oscar Salico drunk and swaying. That was the time when Delfin told me that he would stop for a while to light his cigarette. So, because the wind was blowing hard, he sat down to light his cigarette at the same time I saw Oscar Salico approached Delfin Abecilla to ask for a cigarette, Delfin told him that he could not give any cigarette because he had no more. In that instance, Oscar kicked Delfin saying, 'You are very greedy; just for a cigarette you would not give me.' So, Delfin Abecilla stood up and faced Oscar and Oscar Salico took a knife and stabbed Delfin Abecilla.

A: Later on, I found Delfin Abecilla at a distance of fifteen brazas from the place of the incident, sitting and in the inclining position in the canal. So, I called for the MPs that were in the jitney and we brought him to the house of Doctor De Guzman but Dr. De Guzman was not in his house. So, we brought him to the town of Victorias to Dr. Hinlo in the municipal building. When Dr. Hinlo arrived in the municipal building, Delfin Abecilla was already dead." (Evidence for the Prosecution, pp. 12, 13, 16.)

The only question which is necessary for us to determine is whether or not the appeal by the prosecution from the order of the Court of First Instance in the present case would place the defendant in double jeopardy. We hold that it does not, for the following reasons: (1) First, because by the dismissal of the case by the court below upon motion of the defendant, the latter has not been in jeopardy; (2) Second, because the appeal by the prosecution in the present case would not place, the defendant in double jeopardy, and (3) Third, because assuming arguendo that the defendant had been already in jeopardy in the court below and would be placed in double jeopardy by the appeal, the defendant has waived his constitutional right not to be put in danger of being convicted twice for the same offense.

(1) Sec. 9, Rule 113 of the Rules of Court, provides:

"SEC. 9. Former conviction or acquittal or former jeopardy.—When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case 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 offense charged in the former complaint or information."

According to the above-quoted provisions, when a defendant has been convicted or acquitted or the case against him is dismissed or otherwise terminated without his express consent upon a valid complaint or information by a court of competent jurisdiction and after he has pleaded, to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the same offense.

But when the case is dismissed with the express consent of the defendant, the dismissal will not be a bar to another prosecution for the same offense; because, his action in having the case dismissed constitutes a waiver of his constitutional right or privilege, for the reason that he thereby prevents the court from proceeding to the trial on the merits and rendering a judgment of conviction against him.

This is in conformity with the well established rule stated in Ruling Case Law and American Jurisprudence, based on a uniform ruling of the courts of last resort in the United States from which our law on jeopardy was taken, as follows:

"Dismissal at Request of Defendant.—It may be stated as a general rule that where an indictment is quashed at the instance of the defendant, though after jeopardy has attached, he cannot thereafter plead former jeopardy when placed on trial on another indictment for the same offense. His action in having the indictment quashed constitutes a waiver of his constitutional privilege. (Ruling Case Law, Vol. 8, pp. 152, 153)

"It may be stated as a general rule that where an indictment is quashed at the instance of the defendant, though after jeopardy has attached, he cannot thereafter plead former jeopardy when placed on trial on another indictment for the same offense. His action in having the indictment quashed constitute a waiver of his constitutional privilege." (American Jurisprudence, Vol. 15, p. 74.)

"Where judgment in a murder case was arrested, at the prisoner's instance, by the judge who presided at the trial, on the ground that he had no jurisdiction in that he held the court outside of his circuit, defendant could be tried again on the same indictment." (Small v. State, 63 Ga., 386.)

"A judgment quashing an indictment, on the ground of the unconstitutionality of the statute under which the charge is brought, when the accused has not been tiled as to his guilt or innocence under the charge, will not be a bar to a subsequent prosecution of the accused for the same charge. (State v. Taylor, 34 La. Ann. 978.)

"A discharge on formal objections to the jurisdiction, but not a trial on the merits, will not support a plea of

former jeopardy. (*Duffy v. Britton*, 48 N. J. Law (19 Vroom) 371, 7 Atl. 679.)

In the case of *Carrol v. State*, 50 Tex. Crim. 485; 8 S. W. 859, the Supreme Court of Texas held the following:

"It is equally true that, where the accused has secured a decision that the indictment is void, or procured its being quashed, the accused is stopped, when he is subsequently indicted, to assert that the former indictment was valid. *U. S. v. Jones* (C. C.) 31 Fed. 725; *Joy v. State*, 14 Ind. 139; *State v. Meakins*, 41 La. Ann. 543, 6 South, 822. And it has been held that, if the accused on a prior trial maintains a variance was material, and the court directed an acquittal on that ground, he cannot subsequently on his plea of former acquittal allege or prove that it was not material. *People v. Meakin*, 61 Hun (N.Y.) 327, 15 N. Y. Supp. 917; *State v. Goff*, 66 Mo. App. 491. Nor can a defendant plead jeopardy where the jury before which he was first on trial was discharged on his motion or with his consent. *Arcia v. State*, 28 Tex. App. 198, 12 S. W. 599; *State v. Coleman*, 54S C. 282 ,32 S. E. 406; *Peiffer v. Com.*, 15 Pa. 868, 53 Am. Dec. 605; *State v. Davis*, 80N. C. 384; *People v. Gardner*, 62 Mich. 307, 29N W. 19; *Com v. Sholes*, 13 Alln (Mass.) 554; *State v. Wamire*, 16 Ind. 357; *McCorkle v. Comm.*, 14 Ind. 39; *hughes v. State*, 35 Ala. 351; *Cobia v. State*, 16 Ala. 781; *Rex v. Stokes*, 6 C. & P. 151; *Foster*, Crown L. 27; 2 *Hawkins*, P. C. c.47, Sec. 1. Under these authorities this quashal of the indictment and dismissal of the case, after the jury was impaneled, being at the instance of defendant and with his full and free consent, cannot be set up by him as a plea in bar of further prosecution." (98 South Western Reporter, *Carrol v. State*, pp. 860, 861)

In the case of *Craig v. United States*, The Circuit Court of Appeals, Ninth Circuit (Feb. 10, 1939), an indictment was returned on Dec. 19, 1934, in the court below against the defendants. The accusation contained two counts. The first count alleged that the defendants had conspired to secure, by corrupt means, dismissal of an indictment and prosecution in which John McKeon and others were charged with a violation of the conspiracy statute. After the trial, after all the evidence had been introduced and both sides had rested, and before the arguments of counsel to the jury, the defense moved to require the government to elect upon which count it would proceed. The government elected to proceed on the second count, and the court dismissed the first count. Subsequently on March 14, 1935, the grand jury returned another indictment against the same defendants in the court below, the first count of which involves the same transaction charged as count 1 of the former indictment, Each of the defendants pleaded not guilty and entered a plea of former jeopardy to the first count. The trial court granted the appellee's motion to strike the plea in bar and of former jeopardy, and the jury returned a verdict of guilty severally as to the appellants therein.

"Arguing in support of their plea in bar and their plea of once in jeopardy, under which they urge the cognate defense or *res judicata*, the appellants contend that the action of the trial judge in the first case, in entering a judgment in their favor on the first count of the first indictment, was, in effect, an instruction for a verdict in favor of the appellant; that 'the mere abandonment of the charge was equivalent to an acquittal'; that the abandonment of count 1 was without the appellants consent; and, finally, that, since count 1 of the first indictment was the same as count 1 of the present indictment, on which the appellants were convicted, the above mentioned pleas should have been sustained.

The appellants, however, are in error when they state that count 1 of the first indictment was dismissed or abandoned without their consent. The very portion of the record quoted by the appellants, and set out above, shows that their counsel renewed 'the motion made to compel the Government to elect to further proceed upon one or the other count of the indictment, rather than upon both counts.' x x x The appellants now contend that, since counts 1 and 2 of the first indictment charged the same offense as that charged by the first count of the present indictment, a dismissal of count 1 of the first indictment is a bar to a prosecution under count 1 of the present indictment, even though the first jury was unable to agree on the count that was in fact submitted to it. If this rule were adopted, a defendant confronted by an indictment containing similar counts could wait until the taking of testimony had begun, could then insist upon an election, and, in the event of the jury's disagreement on the count elected, could block a second trial on a similar count on the ground that the former

count had been abandoned after jeopardy had commenced. We do not think that such an application of the rule as to former jeopardy is a reasonable one, and we decline to adopt it."

In 8 R. C. L. Sec. 141, *supra*, the following language is used:

"It may be stated as a general rule that where an indictment is quashed at the instance of the defendant, though after jeopardy has attached, he cannot thereafter plead former Jeopardy when placed on trial on another indictment for the same offense. His action in having the indictment quashed constitutes a waiver of his constitutional privilege.

"We believe that the court below was correct in granting the appellee's motion to strike the plea in bar and the plea of once in jeopardy." (Federal Reporter, 2d series, Vol. 81, pp. 819, 820)

(2) As a necessary corollary of the above conclusion that the defendant had not been in jeopardy in the court below, because the case was dismissed upon the defendant's own motion, this appeal by the prosecution would not place the defendant in double jeopardy, since a person who has not been once can not be put twice in jeopardy.

Besides, under Sec. 2, Rule 118 of the Rules of Court the prosecution may appeal because the defendant would not be placed thereby in double jeopardy, not only when the defendant has not yet been placed in jeopardy in the court below, but also when, although a defendant had already been in former jeopardy, the appeal by the prosecution would not place him in danger again of being convicted by the appellate court for the same offense, because the question for the appellate court to decide is not the guilt or innocence of the defendant. For example, when after a judgment of conviction rendered by the lower court had become final the court reconsiders its decision and renders another acquitting the defendant, in which the question raised in the appeal is not the guilt or innocence of the appellee, but the jurisdiction of the court to render the second judgment. Or, as in the present case, when the question involved in the appeal is whether or not the lower court erred in dismissing the case on the ground that the evidence for the prosecution does not show that the place where the offense was committed was within the territorial jurisdiction of the court. This court by reversing the appealed decision in such cases can not convict the appellee, but only remand the case to the lower court for further proceeding. The fact that the lower court has to proceed to the trial of the case against the defendant on the merits and may after the trial either acquit or convict him, would not place the defendant in double jeopardy, because the further proceeding by the court below is not a new trial of a case against the defendant, but a mere continuation of the former trial in order that the lower court may decide the case on the merits or the guilt or innocence of the defendant.

(3) Assuming, *arguendo* that the defendant had been already in jeopardy in the court below and that appeal would put him in double jeopardy, it is well settled in this jurisdiction that the right of the defendant not to be put twice in jeopardy is deemed waived if not set up in time as a defense or ground for a motion to dismiss. As the defendant has not set up said right or objected on that ground to the appeal by the prosecution, this court can not *motu proprio* dismiss the appeal, in the same way that if the defendant appeals from a judgment of conviction, waiving his right not to be put twice in court jeopardy, the appellate court can not *motu proprio* dismiss the appeal. The provision of Sec. 2, Rule 118, can not be construed to mean that this Court can not entertain an appeal by the prosecution even if the defendant has waived his right to Object to the appeal on the ground that it would place him in double jeopardy; because the Congress has no power to make the judgment of the Court of First Instance unappealable by the mere fact that the defendant already been in jeopardy, inasmuch as Sec. 2, Art. VIII, of the Constitution provides that the Congress may not deprive the Supreme Court of its appellate jurisdiction to review on appeal all final decisions and orders of the inferior courts in all cases in which an error or question of law is involved, as in the present case.

Besides, Sec. 9, Rule 113, of the Rules of Court provides that "when a defendant shall have been convicted or

acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant by a court of competent jurisdiction upon a valid complaint or information x x x and after the defendant has pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the same offense, etc." It does not say that it shall be a bar if the defendant sets up the defense of double jeopardy in the same way that Sec. 2, of Rule 118 does not provide that the prosecution can not appeal if the defendant set up the defense of double jeopardy; and yet the defendant shall have to set up that defense if prosecuted again for the same offense, for otherwise it is deemed waived and the defendant may be prosecuted and convicted for the same offense.

(4) The case of *People v. Tan* cited in the dissenting opinion is not applicable to the present case; because in that case the prosecution tried to appeal from the judgment of the lower court acquitting the defendant, and as the defendant had been already in jeopardy in the court below for he was acquitted after the trial on the merits on the ground that he was not guilty, the appeal by the prosecution would have placed the accused in double jeopardy; while in the present case the action was dismissed not on the merits, but on the ground that the evidence did not show that the court was of competent jurisdiction, or that the offense charged was committed within the territorial jurisdiction of the court.

The defeated attempt by some members of the constitutional convention "to modify the meaning of the word 'Jeopardy' in the Constitution in such a way that before the judgment of the lower court becomes final, an appeal to the higher court could be permitted," may be quoted in support of the decision of this Court in said case of *Ten*, who was acquitted; but it can not be quoted against the appeal of the prosecution. In the present case in which the defendant was not acquitted on the merits, but the case against him was dismissed with the express consent or upon the motion of the defendant on the ground already stated. For under Section 9, Rule 113, of the Rules of Court such dismissal will not fit be a bar to another prosecution for the same offense and, therefore, to an appeal by the prosecution from the order of dismissal.

It can not be argued that, though under Section 9, Rule 113 of the Rules of Court, "For legal jeopardy to exist, it is enough that a defendant should have been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant has pleaded to the charge." But "in the case at bar it is not pretended that the trial court was not pretend that the trial court was not competent or that the information was not valid, and the dismissal was decreed not only after the defendant had entered a plea of not guilty but after the prosecution had closed its evidence." and therefore, "though termed technically a dismissal the effect of the appealed order was an acquittal on the merits."

This argument or reasoning is predicated on a confusion of the legal concepts of dismissal and acquittal. Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. The only case in which the word, dismissal is commonly but not correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed, the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the

court of competent jurisdiction; and it is elemental that in such case the defendant may again be prosecuted for the same offense before a court of competent jurisdiction.

The dismissal by this Court of the appeals of the prosecution in the cases of *People v. Borja*, 43 Phil. 618 and *People v. Fajardo* can not properly be considered as a precedent against our conclusion. In the first place, because the prosecution itself in said cases asked to have its appeal dismissed, and for that reason this Court had not considered the question of dismissal of a case with the express consent of the accused in connection with the question of double jeopardy. And besides, the ruling in the above-mentioned cases was impliedly reversed by this Court in the case of *People v. Ylagan*, 58 Phil. 851, 854. In this latter case, in which this Supreme court discussed the question whether the dismissal of a case before judgment with or without the express consent of the defendant constitute a waiver of his right not to be placed in jeopardy a second time for the same offense, we held the following:

"Counsel for the government, however, contends that the previous case brought against the appellee was dismissed with her consent, on the theory that the phrase without the consent of the accused, 'used in section 28 of the Code of Criminal Procedure, should be construed to mean over the objection of the accused' or 'against the will of the accused'. We can not accept such a theory. We believe it a sound rule to lay down, that the mere silence of the defendant or his failure to object to the dismissal of the case does not constitute a consent within the meaning of section 28 of the Code of Criminal Procedure. The right not to be put in jeopardy a second time for the same offense is as important as the other constitutional rights of the accused in a criminal case. Its waiver can not, and should not, be predicated on mere silence."

According to the ruling in the above quoted decision, if a criminal case is dismissed before judgment without the express consent of the defendant the dismissal is a bar to another prosecution, but a contrario sensu if he consents expressly to the dismissal he may be prosecuted again for the same offense, because his express consent to the dismissal constituted a waiver of his "right not to be put in jeopardy a second time for the same offense." This ruling is squarely applicable to the question involved in this case, for section 9 of Rule 113 already quoted above was taken from section 28 of the old Code of Criminal Procedure, which was construed in the said decision in *People v. Ylagan* and provided as follows:

"A person cannot be tried for an offense, nor for any attempt to commit the same or frustration thereof, for which he has been previously 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, when the case is dismissed or otherwise terminated before judgment without the consent of the accused."

We have carefully examined the authorities on jeopardy in the United States where from our law on the subject was Imported or taken, and we have found that all of them without exception are in favor of our conclusion that the defendant in the present has not been in jeopardy in the court below, or has waived his right not to be put again in jeopardy for the same offense. Therefore, the defendant can not now claim that the appeal by the prosecution will place him in double jeopardy.

In view of all the foregoing, this case is returned to the lower court and the court a quo is ordered to proceed or continue the trial of the case and decide the case on the merits, without pronouncement as to costs.

So ordered.

Moran, C.J., Ozaeta, Padilla, Tuason, Reyes, and Torres, JJ., concur.

DISSENTING

PARAS, J.:

I dissent.

The defendant-appellee, Oscar Salico, was charged with the offense of homicide in an information filed in the Court of First Instance of Negros Occidental. After the defendant had entered a plea of not guilty, and the prosecution had rested its case, the trial court, upon motion of counsel for the defense, issued an order dated June 5, 1947, dismissing the case on the ground that the prosecution failed to prove that the offense imputed to the defendant was committed within the jurisdiction of the court. He was immediately discharged from custody. This is an appeal by the Government from the order of dismissal.

The Solicitor General contends that, upon the evidence on record, "the conclusion is inevitable that the crossing of the road leading to the old townsite of Victorias, must necessarily lie within the territorial limits of the municipality of Victorias, and, therefore, should have been judicially recognized by the trial court." We find it unnecessary to pass upon this contention, for the fundamental question that presents itself is whether or not the present appeal will place the defendant in double jeopardy. Clearly, the answer has to be in favor of the latter and against the appellant.

The prosecution cannot appeal if the defendant would be placed thereby in double jeopardy. (Rule of Court 118, section 2.) A petition to re-examine and reverse this principle was made in G. R. No. L-2705, *People et al., vs. Tan*, but this Court by unanimous vote denied the same in the following resolution promulgated on January 18, 1949:

"Considering the petition for certiorari and mandamus in L-2705, *People et al., vs. Tan*, in which the petitioners seek a re-examination of the doctrine followed by this Court after the decision of the United States Supreme Court in *Kepner vs. U. S.*, 195 U. S., 100, 11 Phil., 669, namely, that the State and the offended party cannot appeal from a judgment of dismissal or acquittal, it being the contention of the petitioners that a reversal of said doctrine is not violative of the constitutional provision that 'no person shall be twice put in jeopardy of punishment for the same offense' [Article III, paragraph (20), Constitution of the Philippines]; it appearing that a similar attempt for re-examination or reversal had failed to prosper in the Constitutional Convention, as may be seen from the following account by Delegate Jose M. Aruego in his book 'The Framing of the Philippine Constitution,' page 191:

" 'An amendment was proposed by Delegate Barrion to modify the meaning of the word, jeopardy, in such a way that, before the judgment of the lower court became final, an appeal to the higher court could be permitted. The provision as amended by Delegate Barrion would then read as follows:

" 'No person shall be twice put in jeopardy of punishment for an offense upon which a final judgment has been rendered.

" In explaining his amendment, Delegate Barrion stated that he was reaffirming the doctrine of jeopardy, only that he was suggesting that the Convention should give its own meaning of the term, jeopardy, so that the government, like the accused, should be given an opportunity to appeal a case from the decision of the trial court before the sentence would become final. Delegate Barrion said:'

" 'I consider, gentlemen, that an appeal against an acquitting decision should not be considered jeopardy because the decision has not as yet become final. It can be considered jeopardy only if that sentence has become final. I mean to say if the sentence has been appealed to and confirmed by the Supreme Court or if the period fixed by the law for the appeal has already expired.

" 'We know, gentlemen, that we have sad cases in which the offended party come almost weeping because the accused has been acquitted, and the fiscal and the offended party do not understand why he has been acquitted, leaving them no more recourse. The judge is human, has his prejudices; he may err. But if we give to the offended party the same right that the accused has in order that the decision of the trial judge may be reviewed by a more competent authority, the Supreme Court, then we shall have given satisfaction to the offended party.'

"Without any speech against it, the proposed amendment was defeated when put to a vote. The Convention consequently brought to the Constitution the meanings which the jeopardy provision had under the Jones Law.

"And considering that it was therefore the sense of the Constitutional Convention to concur in the doctrine sought to be reconsidered by the herein petitioners: The Court resolved to dismiss the petition."

For legal jeopardy to exist, it is enough that a defendant shall have been convicted or acquitted, or the case against him 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. (Rule of Court 113, section 9.) In the case at bar, it is not pretended that the trial court was not competent or that the information was not valid, and the dismissal was decreed not only after the defendant had entered a plea of not guilty but after the prosecution had closed its evidence. The result is that, though termed technically a dismissal, the effect of the appealed order was an acquittal on the merits. Said dismissal, based on the ground that the prosecution failed to prove that the offense was committed within the jurisdiction of the court, may be erroneous, but this cannot nullify the legal effects of double jeopardy. (U. S. vs. Regala, 28 Phil., 57.) Where a crime is charged and the court has jurisdiction, the case has gone to trial and the witnesses sworn and testified for the prosecution, and the court then sustains the defendant's motion for dismissal, he was in jeopardy, and an appeal does not lie to this court to reverse the judgment of the lower court. (People vs. Borja, 43 Phil., 618.) See also, People vs. Fajardo, 49 Phil., 211.)

Although the defendant-appellee has failed to object to the appeal herein, this fact does not make said appeal allowable, for the right to an appeal is purely a statutory, not an inherent right, and is not a necessary element of due process of law; and where no such appeal is allowed by law in any specific case, none can be taken. (Moran, Comments on the Rules of Court, 2nd Ed., Vol. II, p. 726.) Moreover, "the right not to be put in jeopardy a second time is a fundamental constitutional right, the waiver of which cannot be predicated on mere silence of the accused." (Id., p. 677.)

The instant appeal, not being allowable, should be dismissed.

Bengzon, and Montemayor, JJ., concur.

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.