

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HONORABLE BENJAMIN RELOVA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BATANGAS, SECOND BRANCH, AND MANUE...

G.R. No. L-45129. March 06, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this petition for certiorari and mandamus, the People of the Philippines seek to set aside the orders of the respondent Judge of the Court of First Instance of Batangas in Criminal Case No. 266, dated 12 August 1976 and 8 November 1976, respectively, quashing an information for theft filed against private respondent Manuel Oplencia on the ground of double jeopardy and denying the petitioner's motion for reconsideration.

On 1 February 1975, members of the Batangas City Police together with personnel of the Batangas Electric Light System, equipped with a search warrant issued by a city judge of Batangas City, searched and examined the premises of the Oplencia Carpena Ice Plant and Cold Storage owned and operated by the private respondent Manuel Oplencia. The police discovered that electric wiring, devices and contraptions had been installed, without the necessary authority from the city government, and "architecturally concealed inside the walls of the building"[1] owned by the private respondent. These electric devices and contraptions were, in the allegation of the petitioner "designed purposely to lower or decrease the readings of electric current consumption in the electric meter of the said electric [ice and cold storage] plant." [2] During the subsequent investigation, Manuel Oplencia admitted in a written statement that he had caused the installation of the electrical devices "in order to lower or decrease the readings of his electric meter". [3]

On 24 November 1975, an Assistant City Fiscal of Batangas City filed before the City Court of Batangas City an information against Manuel Oplencia for violation of Ordinance No. 1, Series of 1974, Batangas City. A violation of this ordinance was, under its terms, punishable by a fine "ranging from Five Pesos (P5.00) to Fifty Pesos (P50.00) or imprisonment, which shall not exceed thirty (30) days, or both, at the discretion of the court". [4] This information read as follows:

"The undersigned, Assistant City Fiscal, accuses Manuel Oplencia y Lat of violation of Sec. 3 (b) in relation to Sec. 6 (d) and Sec. 10 Article II, Title IV of ordinance No. 1, S. 1974, with damage to the City Government of Batangas, and penalized by the said ordinance, committed as follows:

That from November, 1974 to February, 1975 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, with intent to defraud the City Government of Batangas, without proper authorization from any lawful and/or permit from the proper authorities, did then and there wilfully, unlawfully and feloniously make unauthorized installations of electric wirings and devices to lower or decrease the consumption of electric fluid at the Oplencia Ice Plant situated at Kumintang, Ibaba, this city and as a result of such unauthorized installations of electric wirings and devices made by the accused, the City Government of Batangas was damaged and prejudiced in the total amount of FORTY ONE THOUSAND,

SIXTY TWO PESOS AND SIXTEEN CENTAVOS (P41,062.16) Philippine currency, covering the period from November 1974 to February, 1975, to the damage and prejudice of the City Government of Batangas in the aforestated amount of P41,062.16, Philippine currency."

The accused Manuel Oplencia pleaded not guilty to the above information. On 2 February 1976, he filed a motion to dismiss the information upon the grounds that the crime there charged had already prescribed and that the civil indemnity there sought to be recovered was beyond the jurisdiction of the Batangas City Court to award. In an order dated 6 April 1976, the Batangas City Court granted the motion to dismiss on the ground of prescription, it appearing that the offense charged was a light felony which prescribes two months from the time of discovery thereof, and it appearing further that the information was filed by the fiscal more than nine months after discovery of the offense charged in February 1975.

Fourteen (14) days later, on 20 April 1976, the Acting City Fiscal of Batangas City filed before the Court of First Instance of Batangas, Branch II, another information against Manuel Oplencia, this time for theft of electric power under Article 308 in relation to Article 309, paragraph (1), of the Revised Penal Code. This information read as follows:

"The undersigned Acting City Fiscal accuses Manuel Oplencia y Lat of the crime of theft, defined and penalized by Article 308, in relation to Article 309, paragraph (1) of the Revised Penal Code, committed as follows:

That on, during, and between the month of November, 1974, and the 21st day of February, 1975, at Kumintang, Ibaba, Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent of gain and without the knowledge and consent of the Batangas Electric Light System, did then and there, wilfully, unlawfully and feloniously take, steal and appropriate electric current valued in the total amount of FORTY ONE THOUSAND, SIXTY TWO PESOS AND SIXTEEN CENTAVOS (P41,062.16) Philippine currency, to the damage and prejudice of the said Batangas Electric Light System, owned and operated by the City Government of Batangas, in the aforementioned sum of P41,062.16."

The above information was docketed as Criminal Case No. 266 before the Court of First Instance of Batangas, Branch II. Before he could be arraigned thereon, Manuel Oplencia filed a Motion to Quash, dated 5 May 1976, alleging that he had been previously acquitted of the offense charged in the second information and that the filing thereof was violative of his constitutional right against double jeopardy. By Order dated 16 August 1976, the respondent Judge granted the accused's Motion to Quash and ordered the case dismissed. The gist of this Order is set forth in the following paragraphs:

"The only question here is whether the dismissal of the first case can be properly pleaded by the accused in the motion to quash.

In the first paragraph of the earlier information, it alleges that the prosecution "accuses Manuel Oplencia y Lat of violation of Sec. 3(b) in relation to Sec. 6(d) and Sec. 10 Article II, Title IV of Ordinance No. 1, s. 1974, with damage to the City Government of Batangas, etc." (underlining supplied). The first case, as it appears, was not simply one of illegal electrical connections. It also covered an amount of P41,062.16 which the accused, in effect, allegedly with intent to defraud, deprived the city government of Batangas. If the charge had meant illegal electric installations only, it could have alleged illegal connections which were done at one instance on a particular date between November, 1974, to February 21, 1975. But as the information states "that from November, 1974 to February 1975 at Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud the City Government of Batangas, without proper authorization from any lawful and/or permit from the proper authorities, did then and there wilfully, unlawfully and feloniously make

unauthorized installations of electric wirings and devices, etc." (underline supplied), it was meant to include the P41,062.16 which the accused had, in effect, defrauded the city government. The information could not have meant that from November 1974 to 21 February 1975, he had daily committed unlawful installations.

When, therefore, he was arraigned and he faced the indictment before the City Court, he had already been exposed, or he felt he was exposed to consequences of what allegedly happened between November 1974 to February 21, 1975 which had allegedly resulted in defrauding the City of Batangas in the amount of P41,062.16." (Emphases and parentheses in the original)

A Motion for Reconsideration of the above-quoted Order filed by the petitioner was denied by the respondent Judge in an Order dated 18 November 1976.

On 1 December 1976, the present Petition for Certiorari and Mandamus was filed in this Court by the Acting City Fiscal of Batangas City on behalf of the People.

The basic premise of the petitioner's position is that the constitutional protection against double jeopardy is protection against a second or later jeopardy of conviction for the same offense. The petitioner stresses that the first information filed before the City Court of Batangas City was one for unlawful or unauthorized installation of electrical wiring and devices, acts which were in violation of an ordinance of the City Government of Batangas. Only two elements are needed to constitute an offense under this City Ordinance: (1) that there was such an installation; and (2) no authority therefor had been obtained from the Superintendent of the Batangas City Electrical System or the District Engineer. The petitioner urges that the relevant terms of the City Ordinance — which read as follows:

"Section 3 — Connection and Installation:

(a) x x x

(b) The work and installation in the houses and building and their connection with the Electrical System shall be done either by the employee of the system duly authorized by its Superintendent or by persons adept in the matter duly authorized by the District Engineer. Applicants for electrical service permitting the works of installation or connection with the system to be undertaken by the persons not duly authorized therefor shall be considered guilty of violation of the ordinance."

would show that:

"The principal purpose for (sic) such a provision is to ensure that electrical installations on residences or buildings be done by persons duly authorized or adept in the matter, to avoid fires and accidents due to faulty electrical wirings. It is primarily a regulatory measure and not intended to punish or curb theft of electric fluid which is already covered by the Revised Penal Code."[5]

The gist of the offense under the City Ordinance, the petitioner's argument continues, is the installing of electric wiring and devices without authority from the proper officials of the city government. To constitute an offense under the city ordinance, it is not essential to establish any mens rea on the part of the offender generally speaking, nor, more specifically, an intent to appropriate and steal electric fluid.

In contrast, the petitioner goes on, the offense of theft under Article 308 of the Revised Penal Code filed before the Court of First Instance of Batangas in Criminal Case No. 266 has quite different essential elements. These elements are:

"1. That personal property be taken;

2. That the personal property (taken) belongs to another;

3. That the taking be done with intent of gain;
4. That the taking be done without the consent of the owner; and
5. That the taking be accomplished without violence against or intimidation of persons or force upon things."[6]

The petitioner also alleges, correctly, in our view, that theft of electricity can be effected even without illegal or unauthorized installations of any kind by, for instance, any of the following means:

- "1. Turning back the dials of the electric meter;
2. Fixing the electric meter in such a manner that it will not register the actual electrical consumption;
3. Under-reading of electrical consumption; and
4. By tightening the screw of the rotary blade to slow down the rotation of the same."[7]

The petitioner concludes that:

"The unauthorized installation punished by the ordinance [of Batangas City] is not the same as theft of electricity [under the Revised Penal Code]; that the second offense is not an attempt to commit the first or a frustration thereof and that the second offense is not necessarily included in the offense charged in the first information".[8]

The above arguments made by the petitioner are of course correct. This is clear both from the express terms of the constitutional provision involved — which reads as follows:

"No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." (Emphasis supplied; Article IV (22), 1973 Constitution)[9]

and from our case law on this point.[10] The basic difficulty with the petitioner's position is that it must be examined, not under the terms of the first sentence of Article IV (22) of the 1973 Constitution, but rather under the second sentence of the same section. The first sentence of Article IV (22) sets forth the general rule: the constitutional protection against double jeopardy is not available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts. The second sentence of Article IV (22) embodies an exception to the general proposition: the constitutional protection against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charged subsequently under a national statute such as the Revised Penal Code, provided that both offenses spring from the same act or set of acts. This was made clear sometime ago in *Yap vs. Lutero*. [11]

In *Yap*, petitioner Manuel Yap was charged in Criminal Case No. 16054 of the Municipal Court of Iloilo City, with violation of Article 14 of Ordinance No. 22, Series of 1951, in relation to Ordinance No. 15, Series of 1954, of the City of Iloilo. The information charged him with having "wilfully, unlawfully and feloniously drive[n] and operate[d]" an automobile — "recklessly and without reasonable caution thereby endangering other vehicles and pedestrians passing in said street." Three months later, Yap was again charged in Criminal Case No. 16443 of the same Municipal Court, this time with serious physical injuries through reckless imprudence. The information charged him with violation of the Revised Motor Vehicle Law (Act No. 3992 as amended by Republic Act No. 587) committed by driving and operating an automobile in a reckless and negligent manner and as a result thereof inflicting injuries upon an unfortunate pedestrian. Yap moved to quash the second information upon the ground that it placed him twice in jeopardy of punishment for the same act. This motion was denied by the respondent

municipal judge. Meantime, another municipal judge had acquitted Yap in Criminal Case No 16054. Yap then instituted a petition for certiorari in the Court of First Instance of Iloilo to set aside the order of the respondent municipal judge. The Court of First Instance of Iloilo having reversed the respondent municipal judge and having directed him to desist from continuing with Criminal Case No. 16443, the respondent Judge brought the case to the Supreme Court for review on appeal. In affirming the decision appealed from and holding that the constitutional protection against double jeopardy was available to petitioner Yap, then Associate Justice and later Chief Justice Roberto Concepcion wrote:

"To begin with, the crime of damage to property through reckless driving — with which Diaz stood charged in the court of first instance — is a violation of the Revised Penal Code (third paragraph of Article 365), not the Automobile Law (Act No. 3992, as amended by Republic Act No. 587). Hence, Diaz was not twice accused of a violation of the same law. Secondly, reckless driving and certain crimes committed through reckless driving are punishable under different provisions of said Automobile Law. Hence — from the view point of Criminal Law, as distinguished from political or Constitutional Law — they constitute, strictly, different offenses, although under certain conditions, one offense may include the other, and accordingly, once placed in jeopardy for one, the plea of double jeopardy may be in order as regards the other, as in the Diaz case. (Emphases in the original)

Thirdly, our Bill of Rights deals with two (2) kinds of double jeopardy. The first sentence of clause 20, section 1, Article III of the Constitution, ordains that "no person shall be twice put in jeopardy of punishment for the same offense." (Emphasis in the original) The second sentence of said clause provides that "if an act is punishable by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act". Thus, the first sentence prohibits double jeopardy of punishment for the same offense, whereas the second contemplates double jeopardy of punishment for the same act. Under the first sentence, one may be twice put in jeopardy of punishment of the same act, provided that he is charged with different offenses, or the offense charged in one case is not included in, or does not include, the crime charged in the other case. The second sentence applies, even if the offenses charged are not the same, owing to the fact that one constitutes a violation of an ordinance and the other a violation of a statute. If the two charges are based on one and the same act, conviction or acquittal under either the law or the ordinance shall bar a prosecution under the other.[12] Incidentally, such conviction or acquittal is not indispensable to sustain the plea of double jeopardy of punishment for the same offense. So long as jeopardy has attached under one of the informations charging said offense, the defense may be availed of in the other case involving the same offense, even if there has been neither conviction nor acquittal in either case.

The issue in the case at bar hinges, therefore, on whether or not, under the information in case No. 16443, petitioner could — if he failed to plead double jeopardy — be convicted of the same act charged in case No. 16054, in which he has already been acquitted. The information in case No. 16054 alleges, substantially, that on the date and in the place therein stated, petitioner herein had wilfully, unlawfully and feloniously driven and operated "recklessly and without reasonable caution" an automobile described in said information. Upon the other hand, the information in case No. 16443, similarly states that, on the same date and in the same place, petitioner drove and operated the aforementioned automobile in a "reckless and negligent manner at an excessive rate of speed and in violation of the Revised Motor Vehicle Law (Act No. 3992), as amended by Republic Act No. 587, and existing city ordinances". Thus, if the theories mentioned in the second information were not established by the evidence, petitioner could be convicted in case No. 16443 of the very same violation of municipal ordinance charged in case No. 16054, unless he pleaded double jeopardy.

It is clear, therefore, that the lower court has not erred eventually sustaining the theory of petitioner herein."

Put a little differently, where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the identity of offenses charged: the constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the

subsequent offenses charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute, the critical inquiry is to the identity of the acts which the accused is said to have committed and which are alleged to have given rise to the two offenses: the constitutional protection against double jeopardy is available so long as the acts which constitute or have given rise to the first offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.

The question may be raised why one rule should exist where two offenses under two different sections of the same statute or under different statutes are charged, and another rule for the situation where one offense is charged under a municipal ordinance and another offense under a national statute. If the second sentence of the double jeopardy provision had not been written into the Constitution, conviction or acquittal under a municipal ordinance would never constitute a bar to another prosecution for the same act under a national statute. An offense penalized by municipal ordinance is, by definition, different from an offense under a statute. The two offenses would never constitute the same offense having been promulgated by different rule-making authorities — though one be subordinate to the other — and the plea of double jeopardy would never lie. The discussions during the 1934-1935 Constitutional Convention show that the second sentence was inserted precisely for the purpose of extending the constitutional protection against double jeopardy to a situation which would not otherwise be covered by the first sentence.[13]

The question of identity or lack of identity of offenses is addressed by examining the essential elements of each of the two offenses charged, as such elements are set out in the respective legislative definitions of the offenses involved. The question of identity of the acts which are claimed to have generated liability both under a municipal ordinance and a national statute must be addressed, in the first instance, by examining the location of such acts in time and space. When the acts of the accused as set out in the two informations are so related to each other in time and space as to be reasonably regarded as having taken place on the same occasion and where those acts have been moved by one and the same, or a continuing, intent or voluntary design or negligence, such acts may be appropriately characterized as an integral whole capable of giving rise to penal liability simultaneously under different legal enactments (a municipal ordinance and a national statute).

In Yap, the Court regarded the offense of reckless driving under the Iloilo City Ordinance and serious physical injuries through reckless imprudence under the Revised Motor Vehicle Law as derived from the same act or sets of acts — that is, the operation of an automobile in a reckless manner. The additional technical element of serious physical injuries related to the physical consequences of the operation of the automobile by the accused, i.e., the impact of the automobile upon the body of the offended party. Clearly, such consequence occurred in the same occasion that the accused operated the automobile (recklessly). The moral element of negligence permeated the acts of the accused throughout that occasion.

In the instant case, the relevant acts took place within the same time frame: from November 1974 to February 1975. During this period, the accused Manuel Oplencia installed or permitted the installation of electrical wiring and devices in his ice plant without obtaining the necessary permit or authorization from the municipal authorities. The accused conceded that he effected or permitted such unauthorized installation for the very purpose of reducing his electric power bill. This corrupt intent was thus present from the very moment that such unauthorized installation began. The immediate physical effect of the unauthorized installation was the inward flow of electric current into Oplencia's ice plant without the corresponding recording thereof in his electric meter. In other words, the "taking" of electric current was integral with the unauthorized installation of electric wiring and devices.

It is perhaps important to note that the rule limiting the constitutional protection against double jeopardy to a subsequent prosecution for the same offense is not to be understood with absolute literalness. The identity of

offenses that must be shown need not be absolute identity: the first and second offenses may be regarded as the "same offense" where the second offense necessarily includes the first offense or is necessarily included in such first offense or where the second offense is an attempt to commit the first or a frustration thereof.[14] Thus, for the constitutional plea of double jeopardy to be available, not all the technical elements constituting the first offense need be present in the technical definition of the second offense. The law here seeks to prevent harassment of an accused person by multiple prosecutions for offenses which though different from one another are nonetheless each constituted by a common set or overlapping sets of technical elements. As Associate Justice and later Chief Justice Ricardo Paras cautioned in *People vs. del Carmen, et al.*, 88 Phil. 51 (1951):

"While the rule against double jeopardy prohibits prosecution for the same offense, it seems elementary that an accused should be shielded against being prosecuted for several offenses made out from a single act. Otherwise, an unlawful act or omission may give rise to several prosecutions depending upon the ability of the prosecuting officer to imagine or concoct as many offenses as can be justified by said act or omission, by simply adding or subtracting essential elements. Under the theory of appellant, the crime of rape may be converted into a crime of coercion, by merely alleging that by force and intimidation the accused prevented the offended girl from remaining a virgin." (88 Phil. at 53; emphases supplied)

By the same token, acts of a person which physically occur on the same occasion and are infused by a common intent or design or negligence and therefore form a moral unity, should not be segmented and sliced, as it were, to produce as many different acts as there are offenses under municipal ordinances or statutes that an enterprising prosecutor can find.

It remains to point out that the dismissal by the Batangas City Court of the information for violation of the Batangas City Ordinance upon the ground that such offense had already prescribed, amounts to an acquittal of the accused of that offense. Under Article 89 of the Revised Penal Code, "prescription of the crime" is one of the grounds for "total extinction of criminal liability". Under the Rules of Court, an order sustaining a motion to quash based on prescription is a bar to another prosecution for the same offense.[15]

It is not without reluctance that we deny the people's petition for certiorari and mandamus in this case. It is difficult to summon any empathy for a businessman who would make or enlarge his profit by stealing from the community. Manuel Oplencia is able to escape criminal punishment because an Assistant City Fiscal by inadvertence or otherwise chose to file an information for an offense which he should have known had already prescribed. We are, however, compelled by the fundamental law to hold the protection of the right against double jeopardy available even to the private respondent in this case.

The civil liability aspects of this case are another matter. Because no reservation of the right to file a separate civil action was made by the Batangas City electric light system, the civil action for recovery of civil liability arising from the offense charged was impliedly instituted with the criminal action both before the City Court of Batangas City and the Court of First Instance of Batangas. The extinction of criminal liability whether by prescription or by the bar of double jeopardy does not carry with it the extinction of civil liability arising from the offense charged. In the present case, as we noted earlier,[16] accused Manuel Oplencia freely admitted during the police investigation having stolen electric current through the installation and use of unauthorized electrical connections or devices. While the accused pleaded not guilty before the City Court of Batangas City, he did not deny having appropriated electric power. However, there is no evidence in the record as to the amount or value of the electric power appropriated by Manuel Oplencia, the criminal informations having been dismissed both by the City Court and by the Court of First Instance (from which dismissals the Batangas City electric light system could not have appealed[17]) before trial could begin. Accordingly, the related civil action which has not been waived expressly or impliedly, should be remanded to the Court of First Instance of Batangas City for reception of

evidence on the amount or value of the electric power appropriated and converted by Manuel Opulencia and rendition of judgment conformably with such evidence.

WHEREFORE, the petition for certiorari and mandamus is DENIED. Let the civil action for related civil liability be remanded to the Court of First Instance of Batangas City for further proceedings as indicated above. No pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Gancayco, and Sarmiento, JJ., concur.

Cruz, J., took no part, having been a member of the law offices representing respondents, until his appointment to the Supreme Court.

[1] Petition for Certiorari and Mandamus, dated 27 November 1976, p. 2.

[2] Id.

[3] Id.; and Annex "A" of the Petition.

[4] Order dated 6 April 1976 of Acting City Judge Aguileo S. de Villa, City Court, Branch I, Batangas City, Criminal Case No. 2385.

[5] Memorandum for the Petitioner dated 16 April 1977, pp. 13-14.

[6] Memorandum for the Petitioner dated 16 April 1977, p. 14, citing Reyes, Revised Penal Code [1971] p. 584.

[7] Memorandum for Petitioner dated 16 April 1977, p. 15.

[8] Id., p. 16; emphases in the original; brackets supplied.

[9] The above paragraph is taken verbatim from Article III (20) of the 1935 Constitution and is carried over, again verbatim, in Article III (21) of the proposed Constitution adopted by the Constitutional Commission of 1986. The Philippine Bill of July 1, 1902 had provided that "no person for the same offense shall be twice put in jeopardy of punishment —" (Sec. 5, 1 Phil. Anno. Laws [1956] 51). This provision of the Philippine Bill was carried over in identical words in the Jones Law of August 29, 1916 (Sec. 3, *ibid*, 105).

[10] The case Law on this point includes: *Lu Hayco vs. Court of Appeals*, 138 SCRA 227 (1985); *People vs. Bocar*, 138 SCRA 166 (1985); *People vs. Militante*, 117 SCRA 910 (1982); *Flores Jr. vs. Ponce Enrile*, 115 SCRA 236 (1982); *People vs. Glorin*, 80 SCRA 675 (1977); *People vs. Consulta*, 70 SCRA 277 (1976); *Tacas vs. Cariaso*, 72 SCRA 527 (1976); *Bustamante vs. Maceren*, 48 SCRA 155 (1972); *People vs. Mencias*, 46 SCRA 88 (1972); *People vs. Doriquez*, 24 SCRA 163 (1968); *Culanag vs. Director of Prisons*, 20 SCRA 1123 (1967); *People vs. Ramos*, 2 SCRA 523 (1961); *Yap vs. Hon. Lutero*, 105 Phil. 1307 (1959); *People vs. Opemia*, 98 Phil. 698 (1956); *People vs. Alger*, 92 Phil. 227 (1953); *People vs. del Carmen*, 88 Phil. 51 (1951); *Melo vs. People*, 85 Phil. 766 (1950); *People vs. Ylagan*, 58 Phil. 851 (1933); *People vs. Cabrera*, 43 Phil. 82 (1922); *Julia vs. Sotto*, 2 Phil. 247 (1903).

[11] G.R. No. L-12669, 30 April 1959. Unfortunately, this decision is not reported in full; see 105 Phil. 1307 (1959).

[12] Emphases supplied.

[13] The second sentence of Article III (22) of the 1935 Constitution was originally introduced by Delegate

Francisco. The amendment read:

"Si un acto esta penado tanto por una ley general como por una ordenanza municipal, la absolucion o condena bajo la una sera obice para un procesamiento ulterior bajo la otra." (IV Proceedings of the Philippine Constitutional Convention [1966; S.H. Laurel, Ed.], p. 97)

Delegate Jose P. Laurel speaking in connection with the Francisco amendment said:

"MR. LAUREL. Mr. President and Gentlemen of the Convention: Pardon me if I have to make a little explanation in connection with this case. In the case of the United States vs. Grafton, the Supreme Court of the United States said that a person accused before a military tribunal and acquitted, cannot again be accused before a civil court, because to do so will be to place a person twice in jeopardy. In that case, Grafton, who was a soldier was accused before the military court. This military court acquitted him. Later on he was again prosecuted for the same offense before a civil court, and the civil court convicted him to fourteen years, eight months and one day. Upon the appeal to the Supreme Court of the United States, the U.S. Supreme Court set aside the judgment of the lower court on the ground that Grafton had been placed twice in jeopardy.

Now, in connection with my statement regarding laws and municipal ordinances, we have in our jurisprudence quite a number of cases, particularly the cases of U.S. vs. Josen, U.S. vs. Espiritu Santo and other cases holding that the conviction under a general law settled power to prosecution (sic) under a local law, and vice versa, on the ground that there are two distinct sovereignties and two distinct violations of the law. We have, therefore, reached a situation where you have in one case the decision of the Supreme Court of the United States, and the decision of our Supreme Court in the Philippine Islands. Now, the theory in the Supreme Court of the United States in the Grafton case was that when the courts acquitted Grafton, the acquittal was by the same authority, the authority of the United States that established the military court. The civil government was established by the same authority of the government of the United States, and consequently — to convict a man already acquitted would be [to] place [him] twice in jeopardy on the same principle that it was the same authority that convicted and condemned Grafton.

Now, the Supreme Court of the Philippine Islands, and with due apology to the Supreme Court, failed to follow the logic of the Grafton case and adhered to the practice obtaining in several states of the Union that in cases where there are two violations, one for a general law and one against a local law, there is no double jeopardy on the ground of two distinct sovereignties and two distinct laws. But there is no doubt that it would be unjust and should not be allowed. The objection and the example given here by the Representative from Cebu that a person may be influential or may be shrewd enough in case he is accused, for instance, of gambling, in hurrying to the chief of police and having him accused of violation of a municipal ordinance in which case, according to him, it will not be possible to accuse him under a general law, and therefore that will defeat in a way the administration of justice because that will make the administration of justice dependent upon the ability and the shrewdness of the person accused of gambling to hurry to the justice of the peace court. But I desire to inform the members of this Convention, in answer to that argument, that in my opinion, it is preferable that a man should be only accused and convicted once, for instance, for violation of a municipal ordinance and no longer be prosecuted for violation of a general law, rather than to permit that same person be convicted, say one month in the municipal court and then six months in another court for the same offense. I [would] rather see a person convicted once in violation of a municipal offense, rather than to permit the conviction of that person, one for violation of a municipal ordinance, and one for violation of a general law for the same offense, in gambling in that case. If the selection is made, I would prefer the prosecution of a man under a general law than to permit his prosecution twice for the same act of gambling.

x x x (IV Id., pp. 113-115; brackets supplied)

The distinction between "acts" and "offenses" in the context of the double jeopardy provision was present in the minds of the delegates to the Convention. Thus: "MR. LAUREL. Mr. President, that has practically been brought

up here, because some of our delegates suggested that the word "act" be incorporated, which would give rise to difficulties, because one act may constitute different offenses. But when we retain the word "offense", there will be distinct offenses, and consequently, that may be desirable here to retain what is stated in the draft, that is, the word "offense"; but as I said, still if we accept in principle the fact that no person shall be prosecuted twice for violation of a general offense, or if you give latitude to the Committee as to the form of expression, we shall be able to arrive at that point where we can present a proper precept embodying the idea that we shall approve in principle only. I am not in a position to say now whether it would be advisable to retain it; I do not know whether it would be advisable to insert the word "act", because an act may constitute several offenses. It seems to me that it is for the committee to study properly the draft, and recommend what it thinks best.

MR. JOVEN. Does not the gentleman think that such modification is a question of form and not of substance?

MR. LAUREL. Well, my suggestion that we approve in principle the proposition covers this particular case. That is to say, a person may not be prosecuted twice in a case where there are two laws, one general law and one municipal ordinance. That is to say, in case he is prosecuted under a general law, that is a part or the consequences of a municipal ordinance, and vice versa. That is the idea, the primary idea, and that is our recommendation. Now, as to how we should word it, whether we should retain the draft as it is or we shall modify or amplify that and then incorporate the amendment suggested by Delegate Francisco, I think it is just a matter of style and can be entirely left to the Committee on Style." (IV Id., pp. 116-117)

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"SR. FRANCISCO. Senor Presidente, Caballeros de la convencion, voy a ser breve. Yo no estoy conforme con la ultima parte del discurso de mi distinguido amigo el Delegado por Batangas, Sr. Laurel, al decir que la frase "en ningun caso se pondra a una persona en peligro de ser condenada dos veces por el mismo delito", cubre la enmienda que he presentado. La razon es muy sencilla. Las palabras "mismo delito" no quieren decir un mismo acto. Esta cuestion ha sido planteada ante la Corte Suprema. Al ejecutar un acto penado bajo una ordenanza municipal y penado bajo una ley general, se presenta una accion contra el en el juzgado de paz. Convicto en el juzgado de paz y firme la sentencia, se presenta otra acusacion contra el en el juzgado de Primera Instancia por infraccion de una ley general. El acusado se defiende alegando que esta en jeopardy, porque ya habia sido condenado por ese mismo acto, y la Corte Suprema declaro que la teoria del acusado era erronea, porque dice que lo que la ley prohíbe es que se ponga a uno en peligro de ser condenado por un mismo delito y no por un mismo acto, y la Corte Suprema declaro, en ese caso particular, que como quiera que aquel acto estaba penado nor una ordenanza municipal y por una ley general, se cometen dos delitos; uno contra el municipio y otro contra el Estado o contra la ley general, de ahi que mi enmienda en el sentido de que cuando un acusado ha cometido un acto penado por una ordenanza municipal y al mismo tiempo por una ley general, y dicho acusado ya ha sido convicto por la infraccion procesado ulteriormente bajo otra ley. Creo, por lo tanto, que no es cuestion solamente de estilo, sino que es una cuestion fundamental." (IV Id, p. 119, emphases supplied)

[14] Section 9, Rule 117, Revised Rules of Court.

[15] Sections. 2(f) and 8, Rule 117, Revised Rules of Court; see *Cabral vs. Puno*, 70 SCRA 606 (1976).

[16] *Supra* , Note 3.

[17] *People v. Velez*, 77 Phil. 1046 (1946); *People v. Maceda*, 73 Phil. 679 (1942); *People v. Liggayu, et al.*, 97

Phil. 865 (1955).

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