

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. GERVASIO ALGER, DEFENDANT AND APPELLEE.

G.R. No. L-4690. November 13, 1952

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/e06a97f40928/>

BAUTISTA ANGELO, J.:

Gervasio Alger was charged in the Court of First Instance of Cebu with illegal possession of a .30 caliber rifle, model 1917, serial No. 137428 and three rounds of ammunition. When the case was called for trial, defendant made an oral motion to dismiss contending that, if it be continued, he would be placed in double jeopardy. It appears that defendant has been previously accused and convicted of a crime of homicide for the perpetration of which he used a weapon which was made the subject of the present charge. After the parties had been heard in support of their respective contentions, the court issued an order sustaining the plea of jeopardy. Hence this appeal.

The plea of jeopardy is predicated on section 9, Rule 113, which 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".

It appears from the above-quoted provision that when a defendant is convicted of a crime by a court of competent jurisdiction upon a valid information, his conviction "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". In order that a former conviction may be a bar to another prosecution, it is, there Core, important to determine if the accused is newly prosecuted either for the same offense, or for any offense which necessarily includes or is necessarily included in the offense charged. Stated in another way, the new charge should refer to the same offense, or to any other necessarily included in it.

This situation does not here obtain. The record shows that the defendant has been previously charged and convicted of a crime of homicide whereas in the present case he is charged with illegal possession of a firearm. The two crimes are distinct from each other. It is true that he crime of homicide has been perpetrated with the same weapon subject of the present case, but this is of no consequence it appearing that the present offense was not eluded in the case of homicide for the reason that the information does not state that such weapon or firearm did not have the permit required by law. The gauge to determine if an offense is necessarily included in another offense is whether the accused could be held liable and convicted of that offense. The defendant in this case could not have been convicted of illegal possession of firearm in the homicide case because of the failure to allege

therein an essential element constituting that offense.

We have taken notice of the fact that the trial court was persuaded to sustain the plea of double jeopardy in view of the ruling laid down in two cases previously decided by this Court (U. S. vs. Poh Chi, 20 Phil, 140; U. S. vs. Gustilo, 19 Phil., 208). But the ruling enunciated in said cases is not on all fours with the present because there the accused committed the acts charged with one criminal act and did so impelled by a single criminal intent. In the case at bar, the defendant committed two different acts with two separate criminal intents, to wit, the desire to take unlawfully the life of a person, and the willful violation of the law which prohibits the possession of a firearm without the required permit. Under the circumstances of this case, the plea of double jeopardy is of no avail.

The order appealed from is hereby set aside, without costs. The Court orders that this case be remanded to the lower court for further proceedings.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, 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.