PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO LEONES, ACCUSED-APPELLANT.

G.R. No. 128514 & G.R. 143856-61. October 03, 2001

Ponente: PUNO, J.

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PUNO, J.:

While it is true that this Court is the court of last resort, there are allegations of error committed by a lower court which we ought not to look into to uphold the right of the accused. Such is the case in an appeal by the prosecution seeking to increase the penalty imposed upon the accused for this runs afoul of the right of the accused against double jeopardy.

The accused Nilo Leones was charged and convicted by the trial court of three (3) counts of rape and three (3) counts of acts of lasciviousness. The dispositive portion of the trial court decision rendered on February 19, 1997 reads, viz:

> "WHEREFORE, this Court finds the accused NILO LEONES guilty as charged. He is hereby sentenced to suffer the penalty of THREE (3) TWENTY (20) YEARS and ONE (1) DAY of reclusion perpetua for the three counts of rape, and THREE (3) indeterminate sentences of FIVE (5) YEARS minimum to SIX (6) YEARS maximum for the three counts of acts of lasciviousness, which he shall serve simultaneously. Further, he is hereby ordered to pay the victim the amount of Fifty Thousand Pesos (P50,000.00) representing moral damages, and one-half of the costs."[1]

The accused did not appeal the above decision, but the prosecution filed a notice of appeal on February 25, 1997.[2] The accused started to serve sentence on March 11, 1997.[3]

In its Appellant's Brief, the prosecution alleges that the penalties for the three counts of rape imposed upon the accused are not in accord with R.A. No. 7659[4] and should each be increased to death; while the penalties meted out for the three counts of acts of lasciviousness are erroneous pursuant to R.A. No. 7610[5] and should each be increased to "12 years and 1 day of reclusion temporal minimum, as minimum, to 17 years and 4 months of reclusion temporal medium, as maximum."[6]

Section 1, Rule 122 of the Revised Rules of Criminal Procedure provides:

> "Section 1. Who may appeal.- Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy."

This Court has not just once ruled that where the accused after conviction by the trial court did not appeal his conviction, an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy and should therefore be dismissed.[7] We held in Heirs of Tito Rillorta v. Hon. Romeo N. Firme, et al.,[8] viz:

> "Section 2 of Rule 122 of the Rules of Court provides that 'the People of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy.' This provision is based on the old case of Kepner v.

> United States (11 Phil. 669; 195 U.S. 100), where the U.S. Supreme Court, reviewing a decision of the Philippine Supreme Court in 1904, declared by a 5-4 vote that appeal of the prosecution from a judgment of acquittal (or for the purpose of increasing the penalty imposed upon the convict) would place him in double jeopardy. It has been consistently applied since then in this jurisdiction."[9]

Even assuming that the penalties imposed by the trial court were erroneous, these cannot be corrected by this Court on appeal by the prosecution. As we held in the Heirs of Rillorta case, viz:

> ". . . whatever error may have been committed by the lower court was merely an error of judgment and not of jurisdiction. It did not affect the intrinsic validity of the decision. This is the kind of error that can no longer be rectified on appeal by the prosecution no matter how obvious the error may be."[10]

The prosecution-appellant cites the cases of People v. Olfindo, et al.,[11] People v. Godines, et al.,[12] and People v. Medina,[13] in support of its appeal. The Solicitor General points out that in these cases, the Court consistently ruled that an appeal in a criminal proceeding opens the whole case for review, including the review of the penalty. The prosecution, however, sorely misses an important point. It is true that said cases enunciate the doctrine that an appeal in a criminal proceeding throws the whole case open for review. However, in all these cases, it was the accused, not the prosecution, who brought the case to this Court on appeal. In contradistinction with the present case, therefore, there was no issue on double jeopardy in the said cases. These cases, therefore, do not lend support to the prosecution's cause which must fall on the ground of double jeopardy.

IN VIEW OF THE FOREGOING, the appeal of the prosecution from the decision of the trial court is dismissed. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Pardo, and Ynares-Santiago, JJ., concur.
Kapunan, J., on official leave.

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[1] Rollo, p. 69; Decision, p. 27.

[2] Original Records, p. 262.

[3] Id., p. 267.

[4] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes.

[5] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes.

[6] Rollo, p. 108; Brief for Plaintiff-Appellant, p. 17.

[7] People v. Ang Cho Kio, 95 Phil. 475 (1954); People v. Pomeroy, 97 Phil. 927 (1955); People v. Paet, 100 Phil. 357 (1956); People v. Sanchez, 101 Phil. 745 (1957); People v. Revil, 104 Phil. 1043 (1958); People v. Ruiz, et al., 81 SCRA 453 (1978).

[8] 157 SCRA 518 (1988).

[9] Id., p. 522.

[10] Id., p. 523.

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[11] 47 Phil. 1 (1924).

[12] 196 SCRA 765 (1991).

[13] 300 SCRA 98 (1998).

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