

PHILIPPINE SAVINGS BANK, PETITIONER, VS. SPOUSES PEDRITO BERMOY AND GLORIA BERMOY, RESPONDENTS.

G.R. NO. 151912. September 26, 2005

Ponente: CARPIO, J.

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CARPIO, J.

The Case

This is a petition for review[1] of the Decision[2] dated 14 November 2001 of the Court of Appeals denying the petition for certiorari filed by petitioner and its Resolution dated 24 January 2002 denying reconsideration.

The Facts

Based on a complaint filed by petitioner Philippine Savings Bank ("petitioner"), respondents Pedrito and Gloria Bermoy ("respondent spouses") were charged with estafa thru falsification of a public document in the Regional Trial Court, Manila, Branch 38 ("trial court"). The Information, docketed as Criminal Case No. 96-154193, alleged:

That on or about May 11, 1994, and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused, being then private individuals, conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously defraud the Philippine Savings Bank a banking institution, duly organized and existing under Philippine Laws xxx, thru falsification of a public document in the following manner, to wit: the said accused prepared, forged and falsified or caused to be prepared, forged and falsified an owner's copy of Transfer Certificate of Title No. 207434, which is an imitation of, and similar to the Transfer Certificate of Title No. 207434 issued by the Regist[er] of Deeds for the City of Manila, and therefore, a public document, by then and there typing on the blank spaces thereon the title no., description of a parcel of land containing an area of 350 square meters, located in Malate, this City, the names of the accused as the registered owners thereof, and then signing, falsifying and simulating the signature of "ALICIA D. GANZON", Register of Deeds, appearing on the lower right hand portion of the 1st page of said document; the name "EDGARDO C. CASTRO", Actg. Deputy, appearing on the right hand middle portion of the 3[rd] page, and imprinting thereon several entries purportedly showing that the annotation thereon was a mortgage in favor A. C. Aguila and Sons, which was cancelled on February 17, 1994, thereby making it appear, as it did appear, that accused are the registered owners of the said property, under said TCT No. 207434 which purportedly is the owner's copy of said title, when in truth and in fact, as the said accused fully well knew, the same is an outright forgery, as the owner's duplicate copy of said Transfer Certificate of Title No. 207434 is in possession of the spouses EDGAR and ELVIRA ALAMO by reason of the previous mortgage of the said property in favor of the latter since February 17, 1994 and which was later sold to them on June 19, 1995; that once the said document has been forged and falsified in the manner above set forth, the said accused presented the same to the Philippine Savings Bank and used the said title as collateral in obtaining, as in fact, they did obtain a loan in the sum of P1,000,000.00 from the said bank, and once in possession of the said amount of P1,000,000.00 with intent to defraud, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to their own personal use and benefit, to the

damage and prejudice of the said Philippine Savings Bank in the aforesaid amount of P1,000,000.00, Philippine Currency.[3]

Upon arraignment, respondent spouses pleaded "not guilty" to the charge.

The trial court set the pre-trial on 11 June 1997. After the hearing on that day, the trial court issued the following Order ("11 June 1997 Order"):

When the case was called for hearing, Atty. Maria Concepcion Puruganan, who entered her appearance as private prosecutor and Atty. Albino Achas, defense counsel, appeared and upon their stipulation, they admitted the jurisdiction of the Court and the identities of the accused.

Upon motion of Atty. Puruganan, private prosecutor, joined by public prosecutor Antonio Israel, without objection from Atty. Achas, let the initial hearing for the reception of the evidence for the prosecution be set on June 18, 1997 at 8:30 a.m., as previously scheduled.[4] (Emphasis supplied)

The minutes of the hearing, which respondent spouses signed, bore the following handwritten notation under the heading "remarks": "Postponed. Upon joint agreement of counsels." [5] This was the only notation made under "remarks." Nowhere in the one-page minutes of the hearing did it state that any of the accused made any stipulation or admission.

During the hearings of 18 June 1997 and 3 September 1997, the prosecution presented the testimonies of Felisa Crisostomo ("Crisostomo"), manager of petitioner's Libertad Manila Branch, and one Hermenigildo Caluag ("Caluag"), also an employee of petitioner. Crisostomo testified that she came to know respondent spouses when they applied for a loan in February 1994. Crisostomo stated that respondent spouses presented to her Transfer Certificate Title No. 207434 ("TCT No. 207434") issued in their name over a parcel of land in Malate, Manila ("Malate lot") which they offered as collateral for the loan. Crisostomo further stated after the approval of respondent spouses' loan application, respondent spouses executed in her presence a real estate mortgage of the Malate lot in favor of petitioner as security for their loan. Caluag testified that he was tasked to register petitioner's certificate of sale over the Malate lot [6] with the Register of Deeds of Manila but the latter refused to do so because the Malate lot had been mortgaged and sold to the spouses Edgar and Elvira Alamo. [7]

After presenting the testimonies of Crisostomo and Caluag, the prosecution rested its case.

Instead of presenting its evidence, the defense filed, with leave of court, a demurrer to evidence on the ground that the prosecution failed to identify respondent spouses as the accused in Criminal Case No. 96-154193. The prosecution, through the private prosecutor, opposed the motion claiming that Crisostomo and Calang had identified respondent spouses. The prosecution also pointed out that as borne by the 11 June 1997 Order, respondent spouses stipulated on their identity during the pre-trial. [8]

The Ruling of the Trial Court

In its Order of 21 April 1998 ("21 April 1998 Order"), the trial court granted respondent spouses' motion, dismissed Criminal Case No. 96-154193, and acquitted respondent spouses. The 21 April 1998 Order reads:

The basic issues to resolve here boils down on (sic) the determination of whether the accused were identified by the prosecution witnesses as the perpetrators of the act complained of during the trial of the case and whether they admitted their identities as the accused named in the information.

After carefully going over the length and breadth of the testimonies of the two prosecution witnesses, there is nothing in the transcript which would slightly indicate that they identified the accused as the persons who obtained a loan from the Philippine Savings Bank and executed the corresponding documents. The identification of an accused [by the witness] may be made by pointing to him directly in open court xxx or [by]

stepping down from the stand and tapping his shoulder. If the accused is not present during the trial, his identification may be effected through his pictures attached to the bail bond or some other means. The identification of an accused as the perpetrator of an offense is essential in the successful prosecution of criminal cases. By the accused's entering a negative plea to the allegations in the information, he denies that he committed the offense. He cannot even be compelled to give his name during the arraignment and for which the Court may enter a plea of not guilty for him.

As to the stipulation of facts regarding the admission of the jurisdiction of the court and the identities of the accused, a cursory reading of the Order of June 11, 1997 reveals that their express conformity to the stipulation of facts entered into by their counsel with the private prosecutor was never asked of them. Considering that the admission of the identities of the accused as the perpetrators of the crime here charged is a matter which adversely affects their substantial rights, such admission must have to involve their express concurrence or consent thereto. This consent is manifested in their signing the pre-trial order containing such admissions. As to the minutes of the proceedings of June 11, 1997, suffice it to state that there is nothing to it (sic) which would even hint that a stipulation of facts ever took place.

WHEREFORE, for insufficiency of evidence, let this case be, as the same is hereby, DISMISSED and accused Pedrito Bermoy and Gloria Visconde [Bermoy] are, as they are hereby, acquitted of the crime charged, with costs de oficio.[9]

The prosecution, again through the private prosecutor, sought reconsideration but the trial court denied its motion in the Order of 28 May 1998.

Petitioner filed a petition for certiorari with the Court of Appeals. The Solicitor General joined the petition.

The Ruling of the Court of Appeals

In its Decision dated 14 November 2001, the Court of Appeals, as earlier stated, denied the petition. It held:

In support of the demurrer to evidence, the defense counsel argued that neither of the witnesses presented by the prosecution was able to identify the accused as allegedly those who committed the crime they were prosecuted for.

xxx

Petitioner, however, argues that the testimonies of the two witnesses they presented identified the accused spouses as the perpetrators of the crime. xxx

We are not convinced. The xxx testimony proves only one thing: that a couple purporting to be the Bermoy spouses presented themselves to the Bank and obtained the loan. Whether they are the same husband and wife accused in this case for Estafa is a different story. The failure of the prosecution to point in open court to the persons of the accused as the same persons who presented themselves to the Bank is a fatal omission. They could be impostors who, armed with the fake title, presented themselves to the Bank as the persons named in the title. The prosecution goofed. Had the witnesses been asked to point to the two accused as the same couple who appeared before the Bank to obtain the loan, there would have been no doubt on their criminal liability.

Petitioner further argued that the law itself does not prescribe the ways to identify the accused, xxx [.]

True, there is no standard form provided by law [for] identifying the accused. Jurisprudence and trial practice show that the accused is usually identified by the witnesses, prompted by the counsel, by either pointing at him or stepping down the witness' stand and tapping him on the shoulder, or by means of photographs. The trial court correctly pointed this out. How else can identification be done, it may be asked.

The petitioner also argues that "the identities of private [respondents] were clearly established as a result of the stipulation by and between the prosecution (thru the private prosecutor) and the defense." It insists that the

Order dated June 11, 1997, is sufficient admission by the accused as to their identities, and [was] allegedly signed by them and their counsel as required under Section 2 of Rule 118 of the Rules on Criminal Procedure. There is no merit to this argument. If ever stipulations were made on June 11, 1997, these must be made in writing, which must be signed by the accused and counsel as their conformity to such stipulations. The records, however, show that the Order dated June 11, 1997, merely stated what transpired during that particular hearing and what the counsels signed was the minutes for the same hearing. Hence, the identities of the accused were not stipulated upon for failure to comply with the requirements under the Rules of Court. The trial court correctly ruled that "there [was] nothing xxx which would even hint that a stipulation of facts ever took place."

xxx

In fine, we are more than convinced that the trial court was correct in granting the demurrer to evidence for insufficiency of evidence on account of lack of proper identification of the accused. But even assuming that the trial court erred, the acquittal of the accused can no longer be reviewed either on appeal or on petition for certiorari for it would violate the right of the accused against double jeopardy. xxx

In the case at bench, it is clear that this petition seeks to review the judgment of the trial court, which already had jurisdiction over the subject matter and of the persons of this case. The trial court had jurisdiction to resolve the demurrer to evidence filed by the accused, either by denying it or by dismissing the case for lack of sufficient evidence. If the demurrer is granted, resulting [in] the dismissal of the criminal case and the acquittal of the accused, this can no longer be reviewed unless it can be shown that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction. In this case, assuming the trial court committed an error, the petitioner has not shown that it committed grave abuse of discretion amounting to lack [or] excess xxx of jurisdiction. The error, if any, is merely an error of judgment.[10]

Petitioner sought reconsideration claiming that the Court of Appeals contradicted itself when it held, on one hand, that the trial court's error did not amount to grave abuse of discretion and stated, on the other hand, that any error committed by the trial court can no longer be reviewed without violating respondent spouses' right against double jeopardy. Petitioner also contended, for the first time, that it is the trial court's duty to insure that the accused sign the pre-trial order or agreement embodying respondent spouses' admissions and that its failure to do so should not be taken against the prosecution.

The Court of Appeals denied petitioner's motion in the Resolution of 24 January 2002 which reads:

The petitioner seems to have misunderstood our ruling regarding the issue on double jeopardy in connection with [the] petition for certiorari. Petitioner argues that our ruling has been contradictory for saying on one hand that "even assuming that the trial court erred, the acquittal of the accused can no longer be reviewed either by appeal or on petition for certiorari for it would violate the right of the accused against double jeopardy" while saying on the other hand "assuming that trial court committed an error, the petitioner has not shown that it committed grave abuse of discretion amounting to lack excess (sic) or excess of jurisdiction." Petitioner asks: "Which is which then?" – meaning, it has not understood what a petition for certiorari is for. If the petitioner read the decision carefully, in between the above-quoted statements of the decision is the case of *People v. Bans*, G.R. No. 104147, December 8, 1994, 238 SCRA 48, where the Supreme Court explicitly explained that "review of the sufficiency of the evidence and of the propriety of the acquittal of the accused [as a result of the grant of the demurrer to evidence] lies outside the function of certiorari." True, a petition for certiorari alleges an error of the trial court but nowhere in our decision did it mention that the trial court in this case committed an error. We merely made an assumption, without saying that there was an error committed by the trial court, to make a point. We meant that if the trial court did commit an error in ruling that there was insufficient evidence resulting in the acquittal of the accused, such error can no longer be reviewed since it would be one of judgment, which is not within the ambit of a certiorari. xxx

The petitioner again asks us: "Who has the duty of requiring the accused to sign the pre-trial order, the

prosecution or the trial court itself?" It answers that it is the trial court because it "has the sole and exclusive duty of seeing to it that all requirements in such proceedings be duly complied with x x x and that duty includes the act of requiring or compelling the accused to sign the pre-trial order, [hence] it is plainly fundamentally erroneous to suppose that such duty can be delegated by the trial court to the prosecution." The petitioner further argues that "the respondent Court was right off ousted of jurisdiction when it deliberately and without legal basis refused to consider the stipulation of facts made by the parties in the eventual pre-trial order x x x despite the absence of signature of the accused in the said pre-trial order."

The arguments of the petitioner are baseless. Nowhere in Rule 118 on Pre-Trial on the Revised Rules of Rules of Criminal Procedure does it require the prosecution or the accused to sign the pre-trial order. All that is required for the trial court to do is to hold a pre-trial conference and issue an order reciting the actions taken, the facts stipulated upon by the parties, and evidence marked. And if there were any agreements or admissions made or entered into by the parties during the pre-trial conference, these should be reduced in writing and signed by the accused and his or her counsel. Otherwise, such agreements or admissions may not be used against the accused. xxx

Hence, it is not incumbent upon the trial court to require the parties to sign the pre-trial order to make the agreements and admissions as evidence against the accused. If the parties made such admission as to the identities of the accused in this case, it is the look-out of the counsels, particularly the prosecutor, to require the accused to sign. Why should the trial court remind the counsels what to do? If the private prosecutor wanted such admission as an evidence against the accused, then she should have required the admission in writing [sic] and signed by the accused and their counsel as required by the rules. But, as the records show, all that was signed was the minutes of the pre-trial conference. As already discussed in our decision, the trial court committed no error on this point.[11]

Hence, this petition.

The Issues

Petitioner alleges that the Court of Appeals erred in:

- HOLDING THAT SUPPOSEDLY IT IS NOT THE DUTY OF THE TRIAL COURT TO REQUIRE THE ACCUSED TO SIGN THE PRE-TRIAL ORDER;
- FAILING TO CONSIDER THE MATTERS STATED IN THE 11 JUNE 1997 PRE-TRIAL ORDER AS STIPULATIONS MADE BY THE PARTIES AND SHOULD THUS BE BINDING ON THEM;
- REFUSING TO RECOGNIZE THE FACT THAT THE ACCUSED WERE SUFFICIENTLY IDENTIFIED DURING THE TRIAL BY THE WITNESS OF THE PROSECUTION; [AND]
- HOLDING THAT DOUBLE JEOPARDY HAD ALLEGEDLY ATTACHED IN THE CASE.[12]

In his Memorandum, the Solicitor General joins causes with petitioner. The Solicitor General contends that the trial court's dismissal of Criminal Case No. 96-154193 was tainted with grave abuse of discretion thus, double jeopardy does not apply in this case.[13]

The Ruling of the Court

The petition has no merit.

On Whether Double Jeopardy is Applicable Here

Paragraph 1, Section 7, Rule 117 ("Section 7") of the 1985 Rules on Criminal Procedure[14] on double jeopardy provides:

Former conviction or acquittal; double jeopardy. — When an accused has 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 or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused 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.

For double jeopardy to apply, Section 7 requires the following elements in the first criminal case:

(a)

The complaint or information or other formal charge was sufficient in form and substance to sustain a conviction;

(b)

The court had jurisdiction;

(c)

The accused had been arraigned and had pleaded; and

(d)

He was convicted or acquitted or the case was dismissed without his express consent.[15]

On the last element, the rule is that a dismissal with the express consent or upon motion of the accused does not result in double jeopardy. However, this rule is subject to two exceptions, namely, if the dismissal is based on insufficiency of evidence or on the denial of the right to speedy trial.[16] A dismissal upon demurrer to evidence falls under the first exception.[17] Since such dismissal is based on the merits, it amounts to an acquittal.[18]

As the Court of Appeals correctly held, the elements required in Section 7 were all present in Criminal Case No. 96-154193. Thus, the Information for estafa through falsification of a public document against respondent spouses was sufficient in form and substance to sustain a conviction. The trial court had jurisdiction over the case and the persons of respondent spouses. Respondent spouses were arraigned during which they entered "not guilty" pleas. Finally, Criminal Case No. 96-154193 was dismissed for insufficiency of evidence. Consequently, the right not to be placed twice in jeopardy of punishment for the same offense became vested on respondent spouses.

The Extent of the Right Against Double Jeopardy

The right against double jeopardy can be invoked if (a) the accused is charged with the same offense in two separate pending cases, or (b) the accused is prosecuted anew for the same offense after he had been convicted or acquitted of such offense, or (c) the prosecution appeals from a judgment in the same case.[19] The last is based on Section 2, Rule 122 of the Rules of Court[20] which provides that "[a]ny party may appeal from a final judgment or order, except if the accused would be placed thereby in double jeopardy."

Here, petitioner seeks a review of the 21 April 1998 Order dismissing Criminal Case No. 96-154193 for insufficiency of evidence. It is in effect appealing from a judgment of acquittal. By mandate of the Constitution[21] and Section 7, the courts are barred from entertaining such appeal as it seeks an inquiry into the merits of the dismissal. Thus, we held in an earlier case:

In terms of substantive law, the Court will not pass upon the propriety of the order granting the Demurrer to

Evidence on the ground of insufficiency of evidence and the consequent acquittal of the accused, as it will place the latter in double jeopardy. Generally, the dismissal of a criminal case resulting in acquittal made with the express consent of the accused or upon his own motion will not place the accused in double jeopardy. However, this rule admits of two exceptions, namely: insufficiency of evidence and denial of the right to a speedy trial xxx In the case before us, the resolution of the Demurrer to Evidence was based on the ground of insufficiency of evidence xxx Hence, it clearly falls under one of the admitted exceptions to the rule. Double jeopardy therefore, applies to this case and this Court is constitutionally barred from reviewing the order acquitting the accused.[22] (Emphasis supplied)

The strict rule against appellate review of judgments of acquittal is not without any basis. As the Court explained in *People v. Velasco*[23] —

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x" Thus, Green [v. United States] expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. xxx [S]ociety's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, "(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.

On Petitioner's Claim that the Trial Court's

Dismissal of Criminal Case No. 96-154193 was Void

Petitioner, together with the Solicitor General, contends that the Court can inquire into the merits of the acquittal of respondent spouses because the dismissal of Criminal Case No. 96-154193 was void. They contend that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it disregarded evidence allegedly proving respondent spouses' identity.[24]

The contention has no merit. To be sure, the rule barring appeals from judgments of acquittal admits of an exception. Such, however, is narrowly drawn and is limited to the case where the trial court "act[ed] with grave abuse of discretion amounting to lack or excess of jurisdiction due to a violation of due process i.e. the prosecution was denied the opportunity to present its case xxx or that the trial was a sham xxx."[25]

None of these circumstances exists here. There is no dispute that the prosecution, through petitioner's counsel as private prosecutor, was afforded its day in court. Neither is there any question that the proceedings in the trial court were genuine. What petitioner points to as basis for the trial court's alleged grave abuse of discretion really concerns its appreciation of the evidence. However, as the Court of Appeals correctly held, any error committed by the trial court on this point can only be an error of judgment and not of jurisdiction. What this Court held in *Central Bank v. Court of Appeals*[26] applies with equal force here —

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." The argument that the judgment is tainted with grave abuse of discretion and therefore, null and void, is flawed because 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 xxx. (Emphasis supplied)

On the Other Errors Assigned by Petitioner

The Court will no longer rule on the other errors assigned by petitioner — on who has the responsibility to insure that the pre-trial agreement is signed by the accused, on the effect of the 11 June 1997 Order, and on whether respondent spouses were identified during the trial. All these entail an inquiry into the merits of the 21 April 1998 Order, which, as earlier stated, cannot be done without violating respondent spouses' right against double jeopardy.

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 14 November 2001 and the Resolution dated 24 January 2002 of the Court of Appeals.

SO ORDERED.

Davide, Jr. (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Romeo A. Brawner, with Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr., concurring.

[3] Rollo, pp. 84-85.

[4] *Ibid.*, p. 78.

[5] Annex "D" of Petition; Rollo, p. 79.

[6] It appears that petitioner foreclosed respondent spouses' mortgage, bought the Malate lot during the foreclosure sale, and obtained a certificate of sale in its favor.

[7] Rollo, pp. 93-99.

[8] *Ibid.*, pp. 91-100.

[9] *Ibid.*, pp. 75-76. (Capitalization in the original)

[10] Rollo, pp. 64-72.

[11] *Ibid.*, pp. 56-59.

[12] *Ibid.*, pp. 27-28.

[13] Ibid., pp. 225-235.

[14] Reiterated in Section 7, Rule 117 of the REVISED RULES OF CRIMINAL PROCEDURE (effective 1 December 2000).

[15] II F. REGALADO, REMEDIAL LAW COMPENDIUM 491 (10th ed., 2004).

[16] *People v. Bans*, G.R. No. 104147, 8 December 1994, 239 SCRA 48.

[17] Section 15, Rule 119 of the 1985 Revised Rules on Criminal Procedure, as amended, (superseded by Section 23, Rule 119 of the REVISED RULES OF CRIMINAL PROCEDURE) provides: "Demurrer to evidence. — After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution." (Emphasis supplied)

[18] *People v. City Court of Silay*, G.R. No. L-43790, 9 December 1976, 74 SCRA 247.

[19] II F. REGALADO, *supra* note 15.

[20] Substantially reiterated in Section 1, Rule 122 of the REVISED RULES OF CRIMINAL PROCEDURE.

[21] Section 21, Article III of the 1987 Constitution provides: "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)

[22] *People v. Bans*, *supra* note 16 (internal citations omitted).

[23] G.R. No. 127444, 13 September 2000, 340 SCRA 207 (internal citations omitted).

[24] Rollo, pp. 47-50, 225-235.

[25] *People v. Sandiganbayan*, 426 Phil. 453 (2002) (internal citations omitted).

[26] G.R. No. 41859, 8 March 1989, 171 SCRA 49.

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