

**PEOPLE OF THE PHILIPPINES AND SOCIAL SECURITY SYSTEM,
PETITIONERS, VS. LILAME V. CELORIO, RESPONDENT.***G.R. No. 226335. June 23, 2021*

Ponente: CARANDANG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-226335/>**CARANDANG, J.:**

Before Us is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision[2] dated April 7, 2016 and the Resolution[3] dated August 9, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 133714 which denied the Petition for Certiorari filed by the People of the Philippines and Social Security System (collectively, petitioners) for being the wrong remedy. Under Rule 65, petitioners had filed a petition for certiorari before the CA assailing the Amended Decision[4] dated April 23, 2013 and Resolutions dated October 24, 2013[5] and December 19, 2013[6] of the Regional Trial Court (RTC) of Quezon City, Branch 85, in Crim. Case No. Q-08-153299, denying their motion for reconsideration and granting the application for probation filed by respondent Lilame V. Celorio (Celorio).

Facts of the Case

Celorio is a member of the Social Security System (SSS). On May 26, 2004, she filed a claim for disability benefits for Pulmonary Tuberculosis. In a random checking of fully-settled disability benefit claims, it was suspected the Celorio's supporting documents on the claim were spurious. The matter was thus referred to the SSS Fraud Investigation Department (FID), where it was confirmed that the documents submitted by Celorio were fraudulent. Thereafter, the SSS asked Celorio to return the benefits she had received in the total amount of P93,948.80.[7] Celorio ignored the demand, thus, a criminal complaint was instituted by the SSS before the Office of the City Prosecutor of Quezon City.[8]

In an Information dated June 4, 2008, Celorio was charged with violation of Section 28 (a) and (b) of Republic Act (R.A.) No. 1161, otherwise known as the Social Security Law, as amended by Republic Act (R.A.) No. 8282 before the RTC. The case was docketed as Crim. Case No. Q-08-153299. The Information reads,

That on or about the 26[th] day of September, 2005, in Quezon City, Philippines, the above-named accused, did then and there willfully, unlawfully and feloniously make false statements of a material fact in her claim for SSS disability, accused well[-]knowing that said statements to be (sic) false and that the documents she presented to the SSS[,] such as [the] Medical Certificate of Dr. Joyce Fernandez- Olan dated May 21, 2004 are spurious, to the damage and prejudice of the Social Security System

CONTRARY TO LAW.[9]

The pertinent provision of the Social Security Law provides:

Section 28. Penal Clause. – (a) Whoever, for the purpose of causing any payment to be made under this Act, or under an agreement thereunder, where none is authorized to be paid, shall make or cause to be made false statement or representation as to any compensation paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any benefit payable under this Act, or application for

loan with the SSS, or whoever makes or causes to be made any false statement, representation, affidavit or document in connection with such claim or loan, shall suffer the penalties provided for in Article One hundred seventy-two of the Revised Penal Code.

(b) Whoever shall obtain or receive any money or check under this Act or any agreement thereunder, without being entitled thereto with intent to defraud any member, employer or the SSS, shall be fined not less than Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00) and imprisoned for not less than six (6) years and one (1) day nor more than twelve (12) years.

On December 11, 2008, Celorio was arraigned and pleaded not guilty to the offense charged. Thereafter, trial ensued.[10]

Ruling of the Regional Trial Court

On April 23, 2013, the RTC issued a Decision but subsequently changed it to an Amended Decision,[11] which merely corrected the docket number, finding Celorio guilty beyond reasonable doubt of violation of Section 28(a) and (b) of R.A. No. 1161, as amended.[12] Based on the evidence presented, the RTC noted that Celorio filed an application for disability benefit claim on May 26, 2004 and was granted a 30% rating for the illness of Pulmonary Tuberculosis. The RTC found that Celorio submitted fraudulent documents, i.e., DDR 1 form (Death, Disability and Retirement Claim Form), MMD 102 (SSS Medical Certificate), chest x-ray report from Holy Angel Diagnostic Center dated November 29, 2001, and Radiologic Consultation Report dated May 14, 2004 from the Quezon City Diagnostic Clinic.[13] The dispositive portion of the Decision states, to wit:

WHEREFORE, judgment is hereby rendered finding the accused Lilame V. Celorio GUILTY beyond reasonable doubt of violation of Section 28 (a) of R.A. 1161, as amended, and hereby imposes upon her the indeterminate penalty of imprisonment of 1 year and 1 day as minimum to 4 years, 9 months and 11 days as maximum and a fine in the amount of Php5,000.

Accused Lilame V. Celorio is also found GUILTY of violation of Section 28 (b) of R.A. No. 1161, as amended, and she is hereby sentenced to suffer a penalty of imprisonment of one year and pay a fine in the amount of Php5,000.00.

By way of civil indemnity, the accused Lilame V. Celorio is adjudged liable to pay back the Social Security System the total amount of Php93,948.80, received by her due to the fraudulent Disability Benefit Claim, which should be offset against her total contributions of Php122,270.60. The private complainant Social Security System is directed to return to the accused Lilame V. Celorio the balance of her membership contributions in the total amount of Php28,321.80.

SO ORDERED.[14]

On April 25, 2013, Celorio filed an application for probation with the RTC. On April 26, 2013, SSS filed an Urgent Motion for Reconsideration of the Amended Decision, pointing out that pursuant to the provisions of Section 28(b) of R.A. No. 1161, as amended by R.A. No. 8282, the applicable imprisonment for Celorio is not less than six (6) years and one (1) day nor more than twelve (12) years, instead of one (1) year penalty of imprisonment, as imposed by the RTC. SSS further argued that the RTC erred in holding that Celorio's civil obligation to SSS should be offset against her total contributions.[15]

In a Resolution dated October 24, 2013, the RTC denied the Motion for Reconsideration filed by SSS. The RTC held that the Amended Decision dated April 23, 2013 has attained finality on the day Celorio filed her application for probation citing Section 7[16] of Rule 120 of the Rules of Court.[17]

Hence, the RTC held that it is prevented from amending its Decision, because by operation of law, it attained finality with Celorio's filing of the application for probation.[18]

Subsequently, the RTC issued a Resolution[19] dated December 19, 2013, granting Celorio's application for probation. Thus:

WHEREFORE, the application for probation is hereby granted. The execution of the sentence of imprisonment imposed on accused Lilame Celorio in the Court's Amended Decision dated 23 April 2013 is hereby suspended and said accused is hereby placed under probation for a period of two (2) years to be counted from the probationer's initial report for supervision, subject to the following terms and conditions:

x x x x[20]

Petitioners filed a Petition for Certiorari[21] under Rule 65 of the Rules of Court before the CA assailing the following: (1) the Amended Decision dated April 23, 2013 of the RTC which found Celorio guilty for violation of Section 28(a) and (b) of R.A. No. 1161, as amended by R.A. No. 8282, for not imposing the proper penalty;[22] (2) the Resolution dated October 24, 2013 which denied petitioners' Motion for Reconsideration;[23] and (3) the Resolution dated December 19, 2013 of the RTC.[24]

Petitioners asserted that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it: (i) imposed on Celorio the penalty of one (1) year imprisonment, when Section 28 (b) of R.A. No. 1161, as amended by R.A. No. 8282, prescribes an imprisonment of not less than six (6) years and one (1) day; and (ii) ordered the offsetting of Celorio's civil liability to SSS against the contributions made by Celorio with SSS since such offsetting is contrary to the provisions of the Social Security Law as well as the Civil Code provisions on compensation.[25]

Ruling of the Court of Appeals

In its Decision[26] dated April 7, 2016, the CA dismissed the petition. The CA held that petitioners' resort to a petition for certiorari under Rule 65 is an improper remedy from the adverse decision of the RTC; that rather, it should be an ordinary appeal under Rule 41. Hence, the CA held that the petition should be dismissed for being a wrong remedy. The CA held that the remedy to obtain reversal of a judgment on the merits is appeal, and a special action of certiorari cannot be used as a substitute for a lost appeal. The CA ruled that the arguments raised by SSS are not errors involving jurisdiction, but of judgment which is beyond the ambit of a certiorari proceeding. The CA further declared that the RTC merely abused its discretion in imposing a penalty of one (1) year instead of imposing the proper period prescribed under the amendment. Also, the CA held that there is no showing in the Petition nor in the Motion for Reconsideration that the issuance of the Amended Decision and Resolutions were patent and gross as would warrant them being stricken down through a petition for certiorari.[27]

Petitioners filed a Motion for Reconsideration[28] from the Decision of the CA but the Motion was denied in a Resolution[29] dated August 9, 2016.

Proceedings before this Court

Hence, petitioners, through the Office of the Solicitor General filed the present petition. They contend that the Honorable CA erred:

I. WHEN IT DECLARED THAT A PETITION FOR CERTIORARI UNDER RULE 65 OF THE RULES OF COURT IS AN IMPROPER REMEDY TO ASSAIL THE TRIAL COURT'S AMENDED DECISION AND RESOLUTIONS.

II. WHEN IT DECLARED THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION, BUT MERELY ABUSED ITS DISCRETION, WHEN: (i) IT IMPOSED THE WRONG PENALTY OF ONE (1) YEAR IMPRISONMENT AFTER FINDING CELERIO GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 28 (B) OF R.A. NO. 1161, AS AMENDED BY R.A. NO. 8282, EVEN IF THE SAID PROVISION OF LAW MANDATES AN IMPRISONMENT OF NOT

LESS THAN SIX (6) YEARS AND ONE (1) DAY; AND (ii) WHEN IT ORDERED THE OFFSETTING OF CELORIO'S CIVIL LIABILITY AGAINST HER CONTRIBUTIONS TO SSS.[30]

Petitioners' Arguments

On the first issue, petitioners assert that the CA erred when it declared that a petition for certiorari under Rule 65 of the Rules of Court is an improper remedy to assail the RTC's Amended Decision and Resolutions. They maintain that the RTC failed to follow the provisions of Section 28(b) of R.A. No. 1161, as amended by R.A. No. 8282 when after finding Celorio guilty of violation of the said provision, it imposed upon her a penalty of imprisonment of only one (1) year when the aforesaid law clearly provides that penalty to be imposed should be imprisonment of not less than six (6) years and one (1) day nor more than twelve (12) years. Petitioners contend that the minimum penalty to be imposed on Celorio should have been six (6) years and one (1) day and not one (1) year. They cited the case of *Rep. of the Phils. v. Judge Caguioa*,[31] where the Court held that there is grave abuse of discretion when a lower court or tribunal violates the Constitution or grossly disregards the law or existing jurisprudence.[32] Thus, they argue that the RTC's failure to impose the penalty mandated by Section 28(b) of the amended Social Security Law and its refusal to correct the imposable penalty, clearly constitutes grave abuse of discretion amounting to lack or excess of jurisdiction, which is proper to be raised in a petition for certiorari under Rule 65 of the Rules of Court.[33]

Petitioners further argue that the RTC gravely erred in saying that its Amended Decision dated April 23, 2013 had attained finality upon the filing of Celorio's application for probation on April 25, 2013. Petitioners posit that, had the correct duration of the minimum period been imposed on Celorio, she would have been disqualified outright from applying for and being granted the benefits of probation since the Presidential Decree No. 968, or the Probation Law as amended, provides that the benefits of probation shall not be extended to those sentenced to serve a maximum term of imprisonment of more than six (6) years.[34]

Respondent's Comment

In the Comment[35] filed by Celorio, she countered that the CA did not commit any reversible error in affirming the Amended Decision rendered by the RTC. Celorio claims that petitioners resorted to a wrong remedy by filing a petition for certiorari instead of ordinary appeal. Celorio also argues that petitioners should establish that the RTC acted in capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction. She maintains that petitioners failed miserably to show that the alleged error in judgment of the RTC was tainted with grave abuse of discretion. She pointed out that she readily accepted the judgment convicting her of the crime charged and in fact had already applied for and fully served the term of probation when she graduated from said probation as early as March 24, 2016 as can be gleaned from the Certification dated February 4, 2015. Lastly, Celorio points out that petitioners have not assailed the probation granted to Celorio and her release from the same after she had fully complied with all the conditions imposed and served the entire term fixed by the RTC.[36]

Issues

Considering the parties' arguments, the issues to be resolved in this Petition are: (1) whether a petition for certiorari under Rule 65 was the proper remedy in assailing the subject Amended Decision and Resolutions of the RTC; and (2) whether the CA committed reversible error in ruling that the RTC did not commit grave abuse of discretion.

Ruling of the Court

The petition is meritorious.

The issues being interrelated shall be discussed jointly. During the prior deliberations of this case, Chief Justice (then Associate Justice) Alexander G. Gesmundo provided Us with a lucid and scholarly review of this Court's

past rulings, and so enabled Us to arrive at an untangled view of the legal principles at play in this case. At appropriate junctures of Our discussion, We will refer to his paper.

Under Section 1,[37] Rule 120 of the Rules of Criminal Procedure, the duty of a judge in rendering a judgment in a criminal case consists of two things. The first is an adjudication that the accused is guilty of the offense charged. The proper term for this is "verdict," a declaration of truth as to matters of fact.[38] The second part is the imposition of the proper penalty and civil liability, if any. This is properly called the "sentence", a declaration of the legal consequences of the guilt of the accused.[39] Unlike in other jurisdictions,[40] it is the duty and function of trial courts in Our jurisdiction to deliver both the verdict and the sentence. This is the responsibility of the trial court in accordance with its jurisdiction. Jurisdiction refers to the power and capacity of the tribunal to hear, try, and decide a particular case or matter before it.[41] That power and capacity includes the competence to pronounce a judgment, impose a punishment, and enforce or suspend the execution of a sentence in accordance with law.[42]

There have been many instances where this Court has had to reverse a trial court's verdict on the ground of grave abuse of discretion. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[43] Citing *Toh v. Court of Appeals*,[44] the Chief Justice distinguishes grave abuse of discretion (as an error of jurisdiction) with errors of judgment, viz.:

An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, while an error of jurisdiction is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, and which error is correctable only by the extraordinary writ of certiorari.[45] (Emphasis, italics, and underscoring in the original)

The question now is whether it is also grave abuse of discretion when a trial court imposes a sentence based on a repealed or non-existing provision of law. We believe that it is.

A penal law is one "which prohibits an act and imposes a penalty for it." [46] Thus, as rightly pointed out by Chief Justice Alexander G. Gesmundo in his Reflections, "if jurisprudence is of the view that crimes defined in [a] repealed law no longer exists, then it logically follows that penalties under a repealed law also do not exist." [47] Imposing a sentence based on a repealed law is a legally baseless act. The Chief Justice points to the case of *Cruz v. People*, [48] where We said that "judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws" [49] and that "an obstinate disregard of basic and established rule of law or procedure amounts to grave abuse of discretion." [50]

Imposing a legally baseless sentence is not only a serious deviation of a judge's duty under the Rules of Court, but a clear violation of the separation of powers, a doctrine that is of utmost importance in a democratic republic such as ours. In line with such a doctrine, judges cannot arrogate upon themselves the role of lawmakers. They are prohibited from legislating and imposing penalties out of thin air. In the words of the Chief Justice, it "basically betrays sovereign will and deviates from the intention of [the] People's representatives elected to primarily determine policies of governance." [51] It is an arbitrary act based on the judge's "will alone and not upon any course of reasoning and exercise of [lawful] judgment." [52] It is precisely this kind of error that the RTC committed in imposing a sentence that no longer exists under R.A. No. 1161, which had already been amended by R.A. No. 8282. Prior to its amendment, Section 28(b) of R.A. No. 1161 provided as follows:

(b) Whoever shall obtain or receive any money or check under this Act or any agreement thereunder, without being entitled thereto with intent to defraud any covered employee, employer or the SSS, shall be fined not less than five hundred pesos nor more than five thousand pesos and imprisoned for not less than six months nor more than one year. (Emphasis and underscoring supplied)

When Section 28 (b) was later amended by R.A. No. 8282 in 1997, the period of imprisonment for violation of the said section was increased, thus:

(b) Whoever shall obtain or receive any money or check under this Act or any agreement thereunder, without being entitled thereto with intent to defraud any member, employer or the SSS, shall be fined not less than Five thousand pesos (P5,000.00) nor more than Twenty thousand pesos (P20,000.00) and imprisoned for not less than six (6) years and one (1) day nor more than twelve (12) years. (Emphasis and underscoring supplied)

It is very clear from the foregoing that the penalty imposed by the RTC in its Amended Decision was the penalty under the old provision, which had already been amended and superseded by R.A. No. 8282. To emphasize, under the R.A. No. 8282 amendment of Section 28 (b), the penalty should be a fine not less than P5,000.00 nor more than P20,000.00, and imprisonment for not less than six (6) years and one (1) day nor more than twelve (12) years. Here, the RTC rendered a judgment of conviction for violation of Section 28(b) of R.A. No. 1161 without taking into account the amendment by R.A. No. 8282 as to penalties by sentencing the accused to suffer the penalties of imprisonment of one (1) year and a fine in the amount of P5,000.00. The sentence imposed by the RTC being invalid, the penalty should be corrected in conformity with R.A. No. 8282.

We thus turn to the issue of whether the prosecution availed of the proper remedy when they filed a Rule 65 petition before the CA to assail the Amended Decision and Resolutions. We will do well to remember the distinctions between an appeal (under Rule 41 or Rule 45) and a special civil action for certiorari (under Rule 65). In *Madrigal Transport Inc. v. Lapanday Holdings Corp.*[53] We identified several categories by which the two remedies are distinguished, but most essential is as to the purpose. To wit:

As to the Purpose. Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, [W]e explained the simple reason for the rule in this light:

"When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of certiorari." [54]

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court – on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact – a mistake of judgment – appeal is the remedy. [55]

In this case, the prosecution was prevented from filing appeal because Celorio immediately applied for probation. Citing Section 7 of Rule 120 of the Rules of Court, which states that "a judgment becomes final after the lapse of the period for perfecting an appeal, or when the accused has waived in writing his right to appeal, or has applied for probation", the RTC denied the prosecution's Motion for Reconsideration seeking to correct the sentence. We do not think that the Amended Decision attained finality at all. As the Chief Justice points out, because it imposed a sentence that is based on a non-existent or repealed law, it is a void judgment that created no rights and imposed

no duties.[56] Thus, all acts performed pursuant to it and claims emanating from it have no legal effect,[57] including Celorio's probation which the RTC would later approve. We fully agree with the Chief Justice's observation that the principle espoused in *Gregorio v. Director of Prisons*[58] presupposes that a sentence has to be valid in the first place for the rule on immutability of an entered or executed judgment to take effect.[59] He quotes the following passage in *Gregorio*:

As a general rule, where the defendant has executed or entered upon the execution of a valid sentence, the court cannot, even during the fifteen-day period, set it aside and render a new sentence. (*U. S. vs. Hart*, supra; *U. S. vs. Vayson*, supra; *Ex parte Lange* [18731, 18 Wall., 163.]) To paraphrase the language of the United States Supreme Court in the case last cited, the petitioner having paid into court the fine of P25 imposed upon him, and that money having passed into the Treasury of the Philippine Islands, and beyond the legal control of the court, or of any one else but the Philippine Legislature, all under a valid judgment, can the court vacate that judgment entirely, and, without reference to what has been done under it, impose another punishment on the prisoner? To do so is to punish him twice for the same offense. He is not only put in jeopardy twice, but put to actual punishment twice for the same thing.[60] (Emphasis and underscoring in the original)

Thus, he also points us to *People v. Gatward*,[61] where We said:

This was not a case of a court rendering an erroneous judgment by inflicting a penalty higher or lower than the one imposable under the law but with both penalties being legally recognized and authorized as valid punishments erroneous judgment, as thus understood, is a valid judgment. But a judgment which ordains a penalty which does not exist in the catalogue of penalties or which is an impossible version of that in the roster of lawful penalties is necessarily void, since the error goes into the very essence of the penalty and does not merely arise from the misapplication thereof. Corollarily, such a judgment can never become final and executory.[62] (Underscoring and emphasis as they appear in Chief Justice's Reflections.)

The Amended Decision not having attained finality, it was susceptible to review by the CA through an ordinary appeal under Rule 41. Unfortunately for the prosecution, the CA was not able to see this. Nevertheless, the superficial finality of the Amended Decision due to Celorio's application for probation under Section 7 of Rule 120 ought not have prevented the CA from giving due course to the prosecution's Rule 65 petition for certiorari. In *Villareal v. People*,[63] We said:

The proper interpretation of Section 7 of Rule 120 must be that it is inapplicable and irrelevant where the court's jurisdiction is being assailed through a Rule 65 petition. Section 7 of Rule 120 bars the modification of a criminal judgment only if the appeal brought before the court is in the nature of a regular appeal under Rule 41, or an appeal by certiorari under Rule 45, and if that appeal would put the accused in double jeopardy.[64] (Emphasis and underscoring supplied)

We do not forget that in many prior instances, the Court has held that 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. At first glance, it may appear that We have deviated from this settled rule, but as will be explained below, the rule of double jeopardy will apply so as to prevent reversal of appealable errors of judgment – not to errors of jurisdiction, which are correctible only through a writ of certiorari.

In *People v. Veneracion*,[65] which was a special civil action for certiorari, We ruled that the trial judge had committed grave abuse of discretion in imposing the penalty of reclusion perpetua, instead of death, because of his "religious convictions". While We sympathized with the judge's predicament, We said that "a court of law is no place for a protracted debate on the morality or propriety of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice." [66]

In juxtaposition to *Veneracion* is the similar case of *People v. Leones*[67] which reached this Court through ordinary appeal. In *Leones*, the accused was found guilty of three counts of rape, but like in *Veneracion*, instead of imposing the death penalty in accordance with R.A. No. 7659, the trial court meted the penalty of reclusion perpetua for each count. The prosecution – not the accused – appealed the trial court's decision, praying that this Court would correct the error and modify the punishment to that of death. We denied the appeal, ruling that "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." [68] Citing *Heirs of Tito Rillorta v. Judge Firme*, [69] We said:.

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. [70] (Citation omitted)

The instant case was elevated to the CA not through an ordinary appeal, but through a petition for certiorari under Rule 65, because what the prosecution sought to correct was the RTC's grave abuse of discretion in imposing a repealed penalty, which We have explained above is an error of jurisdiction—not a mere error of law or fact. In contrast, an appeal does not seek to vacate the lower court of its jurisdiction as it is a remedy designed to correct mere errors of judgment. Thus, appeals are adjudicated on whether the lower court committed reversible error on a question of fact or of law – not grave abuse of discretion amounting to lack or excess of jurisdiction. [71] It is for this reason that grave abuse of discretion is one of the recognized exceptions to the rule on double jeopardy [72] and explains the differing outcomes in the *Leones* and *Veneracion* cases.

We must recall that to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first. [73] Meanwhile, the first jeopardy attaches only when the following are present: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of competent jurisdiction; (3) the accused has been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent. [74] The second element is crucial for purposes of the instant case, because it is not satisfied when a trial court imposes a sentence with grave abuse of discretion. In such an instance, the judgment would no longer be within the "power and capacity" of the trial court and consequently, will not have the effect of first jeopardy. When a court is vacated of its jurisdiction through a writ of certiorari, then its judgment takes no effect. Thus, the Chief Justice explains that "the first jeopardy attaches only when the sentence or penalty imposed is valid. Conversely, if the sentence or penalty imposed is invalid, there can be no first jeopardy. As such, a modification of an invalid sentence or penalty does not amount to double jeopardy." [75] A contrary ruling would set a dangerous precedent, leading to possible abuses of the rule against double jeopardy. Trial courts would be free to impose penalties based on repealed or non-existent laws and superior courts, including this Court, would be powerless to correct such invalid sentences.

After ascertaining the correct penalty prescribed by law for the offense committed, We now determine whether Celorio is qualified to apply for probation. Section 9 of the Probation Law, Presidential Decree No. 968, as amended, provides that:

Section 9. Disqualified Offenders. – The benefits of this Decree shall not be extended to those:

(a) sentenced to serve a maximum term of imprisonment of more than six years;

x x x x

Since the proper imposable penalty for the crime which respondent Celorio has been convicted of is six (6) years and one (1) day to twelve (12) years, Celorio is disqualified from applying for and availing of the benefits of probation. Probation is a mere privilege, not a right.[76] Its benefits cannot extend to those not expressly included. The accused has no demandable right to probation as it is an act of grace and clemency or immunity conferred by the State which may be granted by the court to a seemingly deserving defendant who thereby escapes the extreme rigors of the penalty imposed by law for the offense which he stands to be convicted.[77] As explained above, the RTC was never in a position to show grace or clemency to Celorio.

Lastly, petitioners claim that the RTC erroneously ordered the offsetting of Celorio's obligation against the total contributions she had made with the SSS. In the assailed Amended Decision of the RTC it was ruled that:

By way of civil indemnity, the accused Lilame V. Celorio is adjudged liable to pay back the Social Security System the total amount of Php93,948.80, received by her due to the fraudulent Disability Benefit Claim, which should be offset against her total contributions of Php122,270.60. The private complainant Social Security System is directed to return to the accused Lilame V. Celorio the balance of her membership contributions in the total amount of Php28,321.80.

We find merit in petitioners' contention and find that the RTC gravely abused its discretion when it ordered the offsetting of Celorio's civil obligation with her SSS contributions. It erroneously applied the principle of compensation under the Civil Code. Compensation is defined as a mode of extinguishing obligations whereby two persons in their capacity as principals are mutual debtors and creditors of each other with respect to equally liquidated and demandable obligations.[78] The offsetting is contrary to the Civil Code provisions on compensation of obligations, as well as applicable provisions of R.A. No. 1161, as amended by R.A. No. 8282.

Under Article 1288 of the Civil Code, it is provided that:

Article 1288. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense.

In the case before Us, Celorio was adjudged to be civilly liable for the amount of P93,948.80 to SSS for violation of Section 28(6) of the subject provision. Celorio's civil liability which arose from the crime in which she was found guilty of committing cannot be offset against her total contributions to SSS. Compensation of civil obligation arising from penal offense is improper and inadvisable because the satisfaction of such obligation is imperative. On the other hand, it cannot be said that SS had a debt in favor of Celorio which is already due and demandable. While, being one of the members of SSS, she has paid her contributions, such contributions are given back to a member and/or to his beneficiaries in the form of benefits. However, the entitlement of a member to his or her beneficiaries to the receipt of such benefits is dependent upon the existence of certain conditions and contingencies, as may be provided for under the Social Security Law. Celorio's membership contributions do not constitute as debts of SSS to Celorio, rather, entitles her to certain benefits. Thus, it was not proper nor legal for the RTC to offset Celorio's liability With her SSS contributions.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The Decision dated April 7, 2016 and the Resolution dated August 9, 2016 of the Court of Appeals in CA-G.R. SP No. 133714 are hereby REVERSED and SET ASIDE.

The Amended Decision dated April 23, 2013 of the Regional Trial Court of Quezon City, Branch 85, in Criminal Case No. Q-08-153299 is hereby MODIFIED to read as follows:

WHEREFORE, judgment is hereby rendered finding accused Lilame V. Celorio GUILTY beyond reasonable doubt of violation of Section 28 (a) of Republic Act No. 1161, as amended, and hereby imposes upon her the indeterminate penalty of imprisonment of one (1) year and one (1) day, as minimum to four (4) years, nine (9)

months and eleven (11) days, as maximum, and a fine in the amount of P5,000.00.

Accused Lilame V. Celorio is also found GUILTY of violation of Section 28 (b) of Republic Act No. 1161, as amended by Republic Act No. 8282, and she is hereby sentenced to suffer the penalty of six (6) years and one (1) day, as minimum, to eight (8) years and one (1) day, as maximum and pay a fine in the amount of P5,000.00.

By way of civil indemnity, accused Lilame V. Celorio is ORDERED to PAY the Social Security System the total amount of P93,948.80, received by her due to the fraudulent Disability Benefit Claim.

The Resolutions dated October 24, 2013 and December 19, 2013 of the Regional Trial Court of Quezon City, Branch 85, which denied petitioners' Motion for Reconsideration and granted respondent's application for probation, are hereby ANNULLED and SET ASIDE.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Caguioa, Zalameda, and Delos Santos,[*] JJ., concur.

[*] Designated as additional Member per Raffle dated September 16, 2020 vice Associate Justice Samuel H. Gaerlan.

[1]Rollo, pp. 25-62.

[2]Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court); id. at 63-72.

[3]Id. at 8-11.

[4]Penned by Presiding Judge Hon. Maria Filomena D. Singh; id. at 122-126.

[5]Id. at 128-129.

[6]Id. at 131-134.

[7]P92,948.80 in some parts of the records.

[8]Rollo, p. 13.

[9]Id.

[10]Id. at 14.

[11]Supra note 4.

[12]Rollo, p. 126.

[13]Id. at 124-125.

[14]Id. at 126.

[15]Id. at 128-129.

[16]Section 7. Modification of judgment. – A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has

applied for probation. (Emphasis supplied)

[17]Rollo, pp. 128-129.

[18]Id. at 129.

[19]Supra note 6.

[20]Rollo, p. 132.

[21]Id. at 78-117.

[22]Id. at 91-95.

[23]Id. at 102-104.

[24]Id. at 111.

[25]Id. at 90-91.

[26]Supra note 2.

[27]Rollo, pp. 68-71:

[28]Id. at 135-163.

[29]Supra note 3.

[30]Rollo, p. 32.

[31]704 Phil. 315 (2013).

[32]Id. at 333.

[33]Rollo, pp. 33-35.

[34]Id. at 44.

[35]Id. at 185-186.

[36]Id.

[37]Section 1. Judgment definition and form. – Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

[38]Black's Law Dictionary, Revised 4[th] Edition (1968), p. 1730.

[39]Id. at 1528.

[40]In the United States of America, it is a jury that delivers the verdict, while the court merely imposes the sentence. See Sixth Amendment, United States Constitution and 18 U.S. Code CHAPTERS 225 & 227.

[41]Villareal v. People, 749 Phil. 16, 44 (2014).

[42]Id.

[43]Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation, 507 Phil. 631, 645 (2005).

- [44]398 Phil. 793 (2000).
- [45]Chief Justice Alexander G. Gesmundo's Reflections, p. 9.
- [46]Black's Law Dictionary Revised 4[th] Edition (1968), p. 1290.
- [47]Chief Justice Alexander G. Gesmundo's Reflections, pp. 1-2.
- [48]812 Phil. 166 (2017).
- [49]Id. at 174, citing Sps. Crisologo v. JEWM Agro-Industrial Corporation, 728 Phil. 315, 328 (2014).
- [50]Chief Justice Alexander G. Gesmundo's Reflections, p. 9.
- [51]Id.
- [52]Id.
- [53]479 Phil. 768 (2004).
- [54]Id. at 780, citing Pure Foods Corporation v. NLRC, 253 Phil. 411, 422-423 (1989).
- [55]Supra note 53 at 780.
- [56]Chief Justice Alexander G. Gesmundo's Reflections, p. 4.
- [57]Id.
- [58]43 Phil. 650 (1992).
- [59]Chief Justice Alexander G. Gesmundo's Reflections, p. 3.
- [60]Id.; supra note 58 at 652-653.
- [61]335 Phil. 440 (1997).
- [62]Id. at 460; Chief Justice Alexander G. Gesmundo's Reflections, p.4.
- [63]Supra note 41.
- [64]Supra note 41 at 43.
- [65]319 Phil. 364 (1995).
- [66]Id. at 373.
- [67]418 Phil. 804 (2001).
- [68]Id. at 806.
- [69]241 Phil 554 (1988).
- [70]Id. at 560.
- [71]Supra note 53 at 778.
- [72]The other is where there has been deprivation of due process or a mistrial. See *People v. Alejandro*, 823 Phil. 684, 692 (2018).
- [73]*Atty. Dimayacyac v. Court of Appeals*, 474 Phil. 139, 147 (2004), citing *People v. Judge Tac-an*, 446 Phil.

496, 507 (2003); Saldana v. Court of Appeals, 268 Phil. 424, 432 (1990); and People v. Judge Bocar, 222 Phil. 468, 472 (1985).

[74]Id., citing Ylagan v. People 58 Phil., 851, 852-853 (1933).

[75]Chief Justice Alexander G. Gesmundo's Reflections, p. 3.

[76]Francisco v. Court of Appeals, 313 Phil. 241, 254 (1995).

[77]Id.

[78]Union Bank of the Philippines v. DBP, 725 Phil. 94, 106 (2014).

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