Safeguarding the Right of Repose: A Call for Consistency in the Application of the Finality-of-Acquittal Doctrine and the Exceptions Therefrom

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I. INTRODUCTION

Article III, Section 21 of the 1987 Constitution provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense."[1] This is commonly known as the right against double jeopardy,[2] which has been

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1. PHIL. CONST. art III, § 21.
2. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 589 (2009 ed.).

acknowledged to be part of the legal system since the era of American occupation in the Philippines.[3]

In 1904, while the Philippines was still under the administration of the United States of America (U.S.), the Supreme Court of the U.S. (SCOTUS) decided the case of *Kepner v. United States*,[4] where it was unequivocally held that the right against double jeopardy exists in the legal system of the Philippines.[5] In *Kepner*, the accused was charged with estafa but was already acquitted of the charge at the trial court level.[6] Upon appeal by the prosecution to the Supreme Court of the Philippines, the Court reversed the judgment of the trial court judge and convicted the accused of the crime. The accused appealed the decision of the Court to the SCOTUS on the ground that he "had been put in jeopardy a second time by the appellate proceedings, in violation of the law against putting a person twice in jeopardy for the same offense, and contrary to the Constitution of the [U.S.]."[7] In ruling that the accused-petitioner had the right against double jeopardy and that said right was violated by the appeal and the decision of the Court, the SCOTUS explained

> [t]hat it was the intention of the President, in the instructions to the Philippine Commission, to adopt a well-known part of the fundamental law of the United States, and to give much of the beneficent protection of the [Bill of Rights] to the people of the Philippine Islands, is not left to inference[;] for[,] in his instructions, dated April 7, 1900, ... he says [—]
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> 'In all the forms of government and administrative provisions which they are authorized to prescribe, the [Commission] should bear in mind that the government which they are establishing is designed not for our satisfaction or for the expression of our theoretical views, but for the happiness, peace[,] and prosperity of the people of the Philippine Islands, and the measures adopted should be made to conform to their customs, their habits, and even their prejudices[,] to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government[.]'
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> But he was careful to add [—]
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> ['']At the same time, the [Commission] should bear in mind, and the people of the islands should be made plainly to understand, that there are certain

3. *Id.* (citing Kepner v. United States, 195 U.S. 100 (1904)).

4. Kepner v. United States, 195 U.S. 100 (1904).

5. *Id.* at 133-34.

6. *Id.* at 110.

7. *Id.* at 111.

> great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs [of laws or] procedure with which they are familiar. It is evident that the most enlightened thought of the Philippine Islands fully appreciates the importance of these principles and rules, and they will inevitably within a short time[,] command universal assent. Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:
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> 'That no person shall be deprived of life, liberty[,] or property without due process of law; that private property shall not be taken for public use without just compensation; that, in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his [or her] favor, and to have the assistance of counsel for his [or her] [defense]; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; *that no person shall be put twice in jeopardy for the same* [*offense*] or be compelled[,] in any criminal case[,] to be a witness against himself [or herself]; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of [attainder] or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the government for a redress of grievances; that no law shall be made respecting an establishment of religion[,] or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.'
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> These words are not strange to the American lawyer or student of constitutional history. They are the familiar language of the Bill of Rights, slightly changed in form, but not in substance, as found in the first nine amendments to the Constitution of the United States, with the omission of the provision preserving the right to trial by jury and the right of the people to bear arms, and adding the prohibition of the [13th] Amendment against slavery or involuntary servitude except as a punishment for crime, and that of [Article] 1, [Section] 9, to the passage of bills of attainder and *ex post facto* laws. These principles were not taken from the Spanish law; they were carefully collated from our own Constitution, and embody almost

> verbatim the safeguards of that instrument for the protection of life and liberty.
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> When Congress came to pass the act of July 1, 1902, it enacted, almost in the language of the President's instructions, the Bill of Rights of our Constitution. In view of the expressed declaration of the President, followed by the action of Congress, both adopting, with little alteration, the provisions of the Bill of Rights, there would seem to be no room for argument that[,] in this form[,] it was intended to carry to the Philippine Islands those principles of our [government] which the President declared to be established as rules of law for the maintenance of individual freedom, at the same time expressing regret that the inhabitants of the islands had not theretofore enjoyed their benefit.[8]

The right against jeopardy was then given constitutional imprimatur when it became part of the 1935 Constitution.[9] In *Melo v. People*,[10] the Court explained that the right existed prior to the promulgation of the Constitution, preceding from Spanish Law and the U.S. Constitution.[11]

Since then, it has been part of every constitution adopted in the country, with the exception of the Japanese-backed 1943 Constitution.

Accordingly, the right entails that a second prosecution for the same offense would be barred if the following elements are present:

> (1) the accused is charged under a complaint or an information sufficient in form and substance to sustain a conviction;
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> (2) the court has jurisdiction;
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> (3) the accused has been arraigned and he [or she] has pleaded; and
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> (4) he [or she] is convicted or acquitted, or the case is dismissed without his [or her] express consent.[12]

II. THE RIGHT OF REPOSE AND THE FINALITY-OF-ACQUITTAL DOCTRINE AS ADJUNCTS OF THE RIGHT AGAINST DOUBLE JEOPARDY

An important aspect of the right against double jeopardy is the *finality-of-acquittal* doctrine, which states that "a judgment of acquittal in criminal proceedings is final and unappealable whether it happens at the trial court"

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8. *Id.* at 122-24 (emphases supplied).
9. 1935 PHIL. CONST. art. III, § 1 (21) (superseded 1973).
10. Melo v. People, 85 Phil. 766 (1950).
11. *Id.* at 768.
12. Yuchengco v. Court of Appeals, 376 SCRA 531, 541 (2002).

or at the appellate level.[13] In other words, "[n]o error, however flagrant, committed by the court against the [S]tate, can be reserved by it for decision by the [Supreme Court] when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."[14]

The rule appears to disproportionately favor the individual defendants vis-à-vis the State, in that an acquittal at any level generally forecloses an appeal by the prosecution, but the individual is afforded numerous chances to appeal verdicts of conviction. The *raison d'être* of the foregoing rule, however, explains the Constitution's obvious tilt of the scales of justice in favor of the defendant. In *Green v. United States*,[15] the SCOTUS explained, in this wise —

> The 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.
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> In accordance with this philosophy[,] it has long been settled under the Fifth Amendment that a verdict of acquittal is final, ending a defendant's jeopardy, and, even when 'not followed by any judgment, is a bar to a subsequent prosecution for the same offence.' ... Thus[,] it is one of the elemental principles of our criminal law that the Government cannot secure a new trial by means of an appeal even though an acquittal may appear to be erroneous.[16]

Restating what was explained above, the SCOTUS enunciated in *United States v. Scott*[17] that "[t]o permit a second trial after an acquittal, however mistaken the acquittal may have been, would present an unacceptably high risk that the Government, with its vastly superior resources, *might wear down the defendant*[,] *so that* '*even though innocent, he may be found guilty*.'"[18]

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13. *Id.* at 540.

14. People v. Ang Cho Kio, 95 Phil. 475, 480 (1954).

15. Green v. United States, 355 U.S. 184 (1957).

16. *Id.* at 187-88 (citing United States v. Ball, 163 U.S. 662, 669 (1896); Peters v. Hobby, 349 U.S. 331, 344-45 (1955); *Kepner*, 195 U.S. at 132; & United States v. Sanges, 144 U.S. 310, 315 (1892)).

17. United States v. Scott, 437 U.S. 82 (1978).

18. *Id.* at 91 (citing *Green*, 355 U.S. at 188) (emphasis supplied).

Thus, the *finality-of-acquittal* doctrine promotes one of the basic criminal law principles in common-law jurisdictions (the Blackstone formulation) which states that "it is better that ten guilty persons escape, than that one innocent suffer."[19] Simply put, what the doctrine seeks to prevent is the wrongful conviction of an innocent person brought by the repeated attempts by the State to prosecute him or her for the same offense. As succinctly summarized by the Court in *People v. Velasco*,[20] thus —

> 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 [or her] acquittal. *The philosophy underlying this rule establishing the absolute nature of acquittals is 'part of the paramount importance [the] 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.
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> Related to his [or her] right of repose is the defendant[']s interest in his [or her] right to have his [or her] trial completed by a particular tribunal. This interest encompasses his [or her] right to have his [or her] guilt or innocence determined in a single proceeding by the initial jury [empaneled] to try him, for society[']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.[21]

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19. People v. Dy y Sero, G.R. No. 229833, July 29, 2019, at 1, *available at* http://sc.judiciary.gov.ph/7316 (last accessed Aug. 15, 2020) (citing 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 358 (9th ed. 1978)).

20. People v. Velasco, 340 SCRA 207 (2000).

21. *Id.* at 240-41 (emphases supplied) (citing Ronald A. Stern, *Government Appeals of Sentences: A Constitutional Response to Arbitrary and Unreasonable Sentences*, 18 AM. CRIM. L. REV. 51, 69 (1980); Paul Westen, *The Three Faces of Double Jeopardy:*

Despite the passage of time, and even with the changes in the country's fundamental law, the Court's interpretation of the right has more or less remained the same through the years. As the Court observed in *Velasco* —

> While some reservations may be had about the contemporary validity of this observation considering the variety of [offspring] begotten, at least in the United States, by the mother rule since then, perhaps it is safer to say that not much deviation has occurred from the general rule laid out in *Kepner*. For *Kepner* may be said to have been the lighthouse for the floundering issues on the effect of acquittals on jeopardy as they sail safely home. The cases of *People v. Bringas*, *People v. Hernandez*, *People v. Montemayor*, *City Fiscal of Cebu v. Kintanar*, *Republic v. Court of Appeals*, and *Heirs of Tito Rillorta v. Firme*, to name a few, are illustrative. Certainly, the reason behind this has not been due to a stubborn refusal or reluctance to 'keep up with the Joneses,' in a manner of speaking, but to maintain fidelity to the principle carefully nurtured by our Constitution, statutes and jurisprudence. As early as *Julia v. Sotto*[,]. the Court warned that without this safeguard against double jeopardy secured in favor of the accused, his [or her] fortune, safety[,] and peace of mind would be entirely at the mercy of the complaining witness who might repeat his [or her] accusation as often as dismissed by the court and whenever he [or she] might see fit, subject to no other limitation or restriction than his [or her] own will and pleasure.[22]

The rule, of course, is not absolute. Like most rules, the *finality-of-acquittal* doctrine has exceptions. In *People v. Laguio*,[23] the Court recognized two exceptions to the rule,[24] namely: (1) where the trial was a sham, similar

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Reflections on Government Appeals of Criminal Sentences, 78 MICH. L. REV. 1001, 1018 & 1022 (1980); *The Proposed Federal Criminal Code and The Government's Right to Appeal Sentences: After the Supreme Court's Green Light-Dare We Proceed?*, TULANE LAW REV., Volume No. 56, Issue No. 2, at 702; Crist v. Bretz, 437 U.S. 28, 36 (1978); Rick A. Bierschbach, *One Bite at the Apple: Reversals of Convictions Tainted by Prosecutorial Misconduct and the Ban on Double Jeopardy*, 94 MICH. L. REV. 1346 (1996); George C. Thomas III, *An Elegant Theory of Double Jeopardy*, U. ILL. L. REV. 827, 840 (1988); Lockhart v. Nelson, 488 U.S. 33 (1988); & Arizona v. Washington, 434 U.S. 497, 503 (1978)).

22. *Velasco*, 340 SCRA at 233-34 (citing People v. Tarok, 73 Phil. 260 (1941); El Pueblo de Filipinas v. Bringas, 70 Phil. 528 (1940); People v. Hernandez, 94 Phil. 49 (1953); People v. Montemayor, 26 SCRA 687 (1969); City Fiscal of Cebu v. Kintanar, 32 SCRA 601 (1970); Republic v. Court of Appeals, 202 Phil. 83 (1982); Heirs of Tito Rillorta v. Firme, 157 SCRA 518 (1988); & Julia v. Sotto, 2 Phil. 247 (1903)).

23. People v. Laguio, Jr., 518 SCRA 393 (2007).

24. *Id.* at 403 & 405.

to the factual circumstances surrounding *Galman v. Sandiganbayan*;[25] and (2) when the lower-level court commits grave abuse of discretion in dismissing a criminal case by granting the accused's demurrer to evidence, as in *People v. Uy*[26] and *Sanvicente v. People*.[27]

III. THE EXCEPTIONS TO THE FINALITY-OF-ACQUITTAL DOCTRINE

A deeper study of the referenced cases, however, reveal that the exceptions have a common thread — they are rooted on the *denial of due process* on the part of the prosecution. In *Galman*, for instance, the Court declared that the right against double jeopardy of the several accused would not be violated even if the earlier verdict of acquittal would be reversed by the Court because the whole trial was a sham.[28] The Court observed that the trial "was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused."[29]

The Court observed that another branch of the government, the Executive, exerted great influence in the case that it undermined the independence of the trial court. The Court observed that the Executive

> had stage-managed in and from Malacañang Palace 'a scripted and predetermined manner of handling and disposing of the Aquino-Galman murder case;' and that 'the prosecution in the Aquino-Galman case and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist, and which not only prevented the prosecution to fully ventilate its position and to offer all the evidences which it could have otherwise presented, but also predetermined the final outcome of the case[.]'[30]

The Court found, for example, that: (1) there was a meeting in Malacañang between and among the President, the Presiding Justice of the Sandiganbayan, and the whole prosecution team regarding the case;[31] (2) the President personally picked the Sandiganbayan Justice who would handle the

25. Galman v. Sandiganbayan, 144 SCRA 43 (1986).

26. People v. Uy, 471 SCRA 668 (2005).

27. Sanvicente v. People, 392 SCRA 610 (2002).

28. *Galman*, 144 SCRA at 87.

29. *Id.*

30. *Id.* at 70.

31. *Id.* at 65-66.

case;[32] (3) there were instances of suppression of evidence and harassment of witnesses;[33] and (4) the case was closely monitored by the President, exemplified by the presence of military personnel during hearings and the existence of the "war room" in the Sandiganbayan for Malacañang officials who were keeping track of the proceedings.[34] From the foregoing, which was not even an exhaustive list of the irregularities found by the Court, the Court concluded that "the prosecution and the sovereign people were *denied due process of law* with a partial court and biased Tanodbayan under the constant and pervasive monitoring and pressure exerted by the authoritarian President to assure the carrying out of his instructions."[35] The Court ultimately held that the right against double jeopardy could not be invoked by the respondents in the case to prevent the reversal of their acquittals.[36]

The rulings in the cases of *Uy* and *Sanvicente* also boiled down to whether the prosecution was denied due process. In *Uy*, the two accused were acquitted by the trial court because one of them retracted their own extrajudicial confession which was the main basis of the charge.[37] After one of the accused retracted the extrajudicial confession for having been made involuntarily, they filed separate demurrers to evidence.[38] The trial court subsequently granted the demurrers, concluding that the extrajudicial confession was not made voluntarily, and that, in any event, it was a fruit of the poisonous tree.[39] The People then questioned the grant of the demurrers and the resulting acquittals by a petition for *certiorari* before the Court[40] The Court then granted the petition for *certiorari* and reversed the acquittals, holding that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the demurrers.[41] It was clear from the decision, however, that the reason why the petition was granted was

32. *Id.* at 78-79.

33. *Id.* at 75.

34. *Galman*, 144 SCRA at 80.

35. *Id.* at 88 (emphasis supplied).

36. *See Galman*, 144 SCRA at 96-97.

37. *Uy*, 471 SCRA at 677-78.

38. *Id.*

39. *Id.* at 678.

40. *Id.* at 679.

41. *Id.* at 681.

because the prosecution was effectively denied due process.[42] The Court in *Uy* explained, *viz.* —

> The trial court blindly accepted the claim of the defense that the confession was not made voluntarily on the basis of an affidavit executed by Panangin on [1 July] 2002 or more than [five] months after his sworn statement-confession was given and after the prosecution rested its case, which affidavit Panangin was not even called to identify and affirm at the witness stand, hence, hearsay.
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> The decision of the trial court undoubtedly deprived the prosecution of due process as it was not given the opportunity to check the veracity of Panangin's alleged retraction.[43]

Meanwhile in *Sanvicente*, there was indeed a discussion on *certiorari* being a proper remedy to assail an invalid acquittal.[44] In the case, the acquittal by the trial court was reversed by the Court of Appeals (CA) on *certiorari*.[45] The discussion in *Sanvicente*, while it did uphold the CA's power to reverse acquittals on *certiorari*, clarified that it could only do so in extraordinary circumstances.[46] Thus —

> The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. Significantly, once the court grants the demurrer, such order amounts to an acquittal and any further prosecution of the accused would violate the constitutional proscription on double jeopardy. This constitutes an exception to the rule that the dismissal of a criminal case made with the express consent of the accused or upon his [or her] own motion bars a plea of double jeopardy.
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> ...
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> Given the far-reaching scope of an accused's right against double jeopardy, even an appeal based on an alleged misappreciation of evidence will not lie. The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case, or where the trial was a sham. However, while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court

42. *Id.*

43. *Uy*, 471 SCRA at 681-82 (emphasis omitted).

44. *Sanvicente*, 392 SCRA at 617.

45. *Id.* at 615.

46. *Id.* at 617.

> blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[47]

The discussion in *Sanvicente* as to the remedy of *certiorari* being proper to question an erroneous acquittal thus needs to be understood in its proper context, i.e., it is still limited to the instances when the prosecution was denied due process. In fact, in *Sanvicente*, the Court reversed the CA, and held that it erred in reversing the trial court through the *certiorari* petition.[48] The Court even dismissed the prosecution's argument of denial of due process as mere "pretext" to cover-up its procedural miscues.[49]

Thus, the cases of *Galman*, *Uy*, and *Sanvicente* point to only one conclusion — the first jeopardy would not attach despite the termination of the case through the acquittal of the accused if, in the process, the prosecution was denied due process.

IV. SOME DEVIATIONS FROM THE LIMITED EXCEPTIONS

In recent years, however, there have been a few cases which have deviated from the standards set by *Galman*, *Uy*, and *Sanvicente*. For instance, in the 2013 case of *People v. Lagos*,[50] the trial court judge granted the demurrer filed by the several accused, thereby acquitting them.[51] The trial court granted the demurrer because it deemed that the evidence presented by the prosecution failed to establish the elements of illegal sale of dangerous drugs. According to the trial court, the prosecution should have presented the confidential informant as witness as he was the person who initiated the negotiation of the sale.[52] A petition for certiorari was thereafter filed in the Court, alleging that the grant of the demurrer was attended with grave abuse of discretion amounting to lack or excess of jurisdiction.[53]

The Court granted the petition for *certiorari* and reinstated the case in the trial court. The Court explained thusly —

> It has long been settled that the grant of a demurrer is tantamount to an acquittal. An acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his [or her] acquittal. This rule, however, is

47. *Id.* at 615-17.

48. *Id.* at 624.

49 *Id.* at 622.

50. People v. Lagos, 692 SCRA 602 (2013).

51. *Id.* at 607.

52. *Id.* at 609.

53. *Id.* at 604 & 607.

> not without exception. The rule on double jeopardy is subject to the exercise of judicial review by way of the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. The Supreme Court is endowed with the power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Here, the party asking for the review must show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary and despotic manner by reason of passion and hostility; or a blatant abuse of authority to a point so grave and so severe as to deprive the court of its very power to dispense justice. In such an event, the accused cannot be considered to be at risk of double jeopardy.[54]

The Court went on to discuss that the conclusions of the trial court had been reached contrary to the evidence on record and the prevailing jurisprudence. Particularly, the Court pointed out that the prosecution witnesses were able to witness and thereafter establish the consummation of the crime,[55] and that the trial court erred in ruling that the testimony of the confidential informant was indispensable.[56] The Court then held that "the grant of the demurrer for this reason alone was not supported by prevailing jurisprudence and constituted grave abuse of discretion. The prosecution[']s evidence was, *prima facie*, sufficient to prove the criminal charges filed against respondents, subject to the defenses they may present in the course of a full-blown trial."[57]

With due respect, the Court in *Lagos* erred in its disquisition for two reasons: *first*, it erred when it held that the demurrer should not have been granted as the evidence of the prosecution *prima facie* established the culpability of the accused; and *second*, it erred when it reversed the acquittal of the accused in violation of the *finality-of-acquittal* doctrine.

On the first point, it was error for the Court to use a standard less than proof beyond reasonable doubt in adjudging the case. Moreover, it was an error for the Court to say that the ruling of the trial court should depend on

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54. *Id.* at 608-09 (citing People v. Court of Appeals, 516 SCRA 383, 397 (2007); De Vera v. De Vera, 584 SCRA 506 (2009); & People v. De Grano, 588 SCRA 550, 567-568 & 567 (2009)).

55. *Lagos*, 692 SCRA at 609-10.

56. *Id.* at 612.

57. *Id.* at 613.

"the defenses [that the accused] may present in the course of a full-blown trial."[58]To recall, "after the prosecution rests its case, and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused *beyond reasonable doubt*."[59] This is in consonance with the principle that "the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense[as the] burden of proof rests on the State."[60] This principle is consistent with the constitutional right of presumption of innocence — which entails that the accused "need not even do anything to establish his [or her] innocence as it is already presumed."[61]

More importantly, the Court in *Lagos* erred in reversing the acquittal of the several accused despite the presence of factual circumstances calling for the application of the *finality-of-acquittal* doctrine. In *Lagos*, there was no allegation, much less proof, that the prosecution was denied due process. In addition, it is apparent from the Court's decision that it was addressing an

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58. *Id.*

59. Bautista v. Cuneta-Pangilinan, 684 SCRA 521, 538-39 (2012) (emphasis supplied). In *People v. Go*, the Court also explained that a demurrer to evidence is

> an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. ... Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.

People v. Go, 732 SCRA 216, 237-38 (2014). Thus, when the accused files a demurrer, the court must evaluate whether the prosecution's evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. *Id.*

60. People v. Tionloc y Marquez, 818 SCRA 1, 14 (2017).

61. Polangcos y Francisco v. People, G.R. No. 239866, Sep. 11, 2019, at 9, *available* at http://sc.judiciary.gov.ph/9837 (last accessed Aug. 15, 2020) (emphasis omitted).

error of judgment by the trial court. Specifically, the errors that were corrected involved the trial court's aberrant appreciation of the testimonies of the prosecution witnesses, and its ruling that the testimony of the confidential informant was indispensable which was contrary to prevailing jurisprudence.[62] While these were admittedly clear errors on the part of the trial court, these were not correctible by *certiorari*. To repeat, the rule is that

> [n]o grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence. *Certiorari will issue only to correct errors of jurisdiction, and not errors or mistakes in the findings and conclusions of the trial court*.
>
> In this case, the Sandiganbayan had jurisdiction over the crimes charged. The People had its day in court and adduced its evidence. There was no collusion between the prosecutor and respondents. The anti-graft court extensively analyzed the evidence of the parties and made its findings and conclusions based thereon. Assuming that any error was committed in the Sandiganbayan's review of the evidence and the records, such errors are mere errors of judgment and not errors of jurisdiction.[63]

In other words, when the prosecution was not denied the opportunity to be heard — the essence of due process, then the resulting acquittal, even if erroneous, could no longer be reversible. To stress, "[n]o error, *however flagrant*, committed by the court against the State, can be reserved by it for decision by the [Supreme Court] when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."[64]

As succinctly summarized in *People v. Court of Appeals*,[65]

> mistrial is the only exception to the well-settled, even axiomatic, principle that acquittal is immediately final and cannot be appealed on the ground of double jeopardy. This Court was categorical in stating that a re-examination of the evidence without a finding of mistrial will violate the right to repose of an accused, which is what is protected by the rule against double jeopardy.[66]

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62. *Lagos*, 692 SCRA at 609-10 & 612.

63. People v. Sandiganbayan, 491 SCRA 185, 212 (2006) (emphasis supplied).

64. *Ang Cho Kio*, 95 Phil. at 480 (citing State v. Rook, 61 Kan. 382, 654 (1900) (U.S.)) (emphasis supplied).

65. People v. Court of Appeals, Fourth Division, 677 SCRA 575 (2012).

66. *Id.* at 579 (citing People v. Tria-Tirona, 463 SCRA 462, 469 (2005) & *Velasco*, 340 SCRA at 220)).

The ruling in *Lagos* was thus, with due respect to the Court, a clear deviation from the *finality-of-acquittal* doctrine, and constituted a violation of the accused's right to double jeopardy.

Lagos, however, was not a simple stray case. In 2014, the Court reversed an acquittal by the trial court, which was already affirmed by the Court of Appeals, in the case of *People v. Go*.[67] In *Go*, the Court did not have any finding that the prosecution was denied due process. Despite this, the Court still granted the petition for *certiorari* by virtue of the Court's "superintending control over inferior courts ... to prevent a substantial wrong or to do substantial justice."[68] Moreover, in reversing the acquittal pronounced by the trial court, the Court explained thus —

> Guided by the foregoing pronouncements, the Court declares that the CA *grossly erred* in affirming the trial court's July 2, 2007 Order granting the respondent's demurrer, which Order was *patently null and void for having been issued with grave abuse of discretion and manifest irregularity*, thus causing substantial injury to the banking industry and public interest. The Court finds that the prosecution has presented competent evidence to sustain the indictment for the crime of estafa through falsification of commercial documents, and that respondents appear to be the perpetrators thereof. In evaluating the evidence, the trial court effectively *failed and/or refused to weigh the prosecution's evidence against the respondents*, which it was duty-bound to do as a trier of facts; considering that the case involved hundreds of millions of pesos of [Orient Commercial Banking Corporation] depositors' money — not to mention that the banking industry is impressed with public interest, the trial court should have conducted itself with circumspection and engaged in intelligent reflection in resolving the issues.[69]

The Court went on to discuss several pieces of evidence presented by the prosecution and how the trial court failed to properly appreciate them. It is clear from the pronouncement of the Court that it was reversing the acquittal because of an *error of judgment* so grave that it rose to the level of *error of jurisdiction* that may be corrected by *certiorari*. With due respect, this is a circumvention of the rule that *certiorari* may only correct errors of jurisdiction, and that errors of judgment, no matter how flagrant, are beyond the scope of such remedy. To reiterate for emphasis, "a re-examination of the evidence without a finding of mistrial will violate the right to repose of

67. People v. Go, 732 SCRA 216 (2014).

68. *Id.* at 240 (citing Gutib v. Court of Appeals, 312 SCRA 365, 378 (1999)).

69. *Go*, 732 SCRA at 240 (emphases supplied).

an accused, which is what is protected by the rule against double jeopardy."[70]

Years later, the temptation to carve out a wider exception to the *finality-of-acquittal* doctrine would again resurface. In a dissenting opinion,[71] it was argued that a resolution of the Sandiganbayan acquitting an accused based on an alleged misinterpretation of certain jurisprudence, even if there was no allegation or proof of denial of due process, should be overturned on *certiorari* as this constituted grave abuse of discretion. The dissent opined, to wit —

> The Sandiganbayan's citation of Tuvera is misleading. This Court's discussion regarding kinship and indirect pecuniary interest was completely separate from its discussion on *delicadeza* and the question of whether the accused's son was disqualified from seeking a timber license agreement.
>
> ...
>
> Grave abuse of discretion has no precise definition, but the Sandiganbayan's muddling of this Court's pronouncements in *Tuvera* to acquit respondent Zurbano of a crime she had already been convicted of amounts to grave abuse of discretion.
>
> Notably, the doctrine of finality of acquittal does not apply when the acquittal was rendered with grave abuse of discretion.
>
> ...
>
> In other words, an acquittal that was rendered with grave abuse of discretion 'does not exist in legal contemplation' and, thus, cannot be final.[72]

Much like in *Lagos* and *Go*, it is once again intimated that an *error of judgment* could be so grave that it would amount to an *error of jurisdiction* correctible by *certiorari*. As previously discussed, this is an inaccuracy because retrying the evidence in a case with a previous judgment of acquittal, in the absence of a finding of a mistrial, would constitute a violation of the right against double jeopardy.

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70. *Court of Appeals, Fourth Division*, 677 SCRA at 579 (citing *Velasco*, 340 SCRA at 220).

71. People v. Sandiganbayan, G.R. No. 233280-92, Sept. 18, 2019, available at http://sc.judiciary.gov.ph/8249 (last accessed Aug. 15, 2020) (J. Leonen, dissenting opinion).

72. *Id.* at 5-7 (citing People v. Sandiganbayan, 581 Phil. 419, 429 (2008)).

V. THE CALL FOR CONSISTENCY

Considering the cases of *Lagos* and *Go*, and the dissenting opinion discussed above, the Court is thus urged to clarify once and for all that the "grave abuse of discretion" exception to the *finality-of-acquittal* rule is one that is narrow in its application. There remains no appeal from a judgment of acquittal, and errors of judgment, no matter how grave or flagrant, that would not justify a reversal of the verdict as it would offend the accused's right against double jeopardy. As *People v. Sandiganbayan*[73] puts it, "to prove that an acquittal is tainted with grave abuse of discretion, the petitioner must show that the prosecution's right to due process was violated or that the trial conducted was a sham[,]" [74] following the rulings in *Galman* and *Uy*.

This persistence to preserve the right of repose of the accused in criminal cases is not brought by an arbitrary insistence to adhere to an age-old rule. The protection that the *finality-of-acquittal* doctrine affords against wrongful conviction, along with the practical argument that it will further de-clog court dockets, are the wisdom that animates the assertion. As elucidated by Commissioner Rustico De Los Reyes during the deliberations of the present Constitution —

> MR. DE LOS REYES: Thank you. Most of the questions I would have asked were covered by the questions of Commissioner Aquino, so, I just have two points to clarify, Mr. Presiding Officer, one of which is the right of the [S]tate to appeal. As I understand it, this constitutes a radical departure from the usual concept of double jeopardy. Once an accused is acquitted by any court which has jurisdiction over the case, after arraignment and plea and a trial has been held, the decision is final and an appeal by the [S]tate cannot be entertained for any reason because that will place the accused in double jeopardy. Therefore, by inserting this provision in the committee report, the Committee on the Judiciary has preempted the right of the Committee on Citizenship, Bill of Rights, Political Rights and Obligations and Human Rights to pass upon that question. If ever an appeal were granted to the [S]tate, it should be on the limited ground of mistrial, which means that there has been no trial at all or that the prosecution has been denied due process. But when there is complete trial, complete with the appreciation and presentation of evidence by both the prosecution and the accused, I do not think the [S]tate should be allowed to appeal, even on the ground that the judgment of acquittal is manifestly against the evidence and with grave abuse of discretion amounting to lack or excess of jurisdiction. The terms 'manifestly against the evidence' and

73. People v. Sandiganbayan, 840 SCRA 639 (2017).

74. *Id.* at 654-55 (emphasis omitted) (citing *Court of Appeals, Fourth Division*, 677 SCRA at 579-580).

'with grave abuse of discretion' are very flexible, and I think this will work against the poor litigants. I am just a small town lawyer in our province and I have been in practice for 25 years. I consider the court my second home, the Revised Penal Code and the Rules of Court my second bibles. I could see that 95 percent of these litigants are poor people. They are detained in the city jail, municipal jail or in the provincial jail. They cannot even afford to file bail bonds. They are defended by *de officio* lawyers who sometimes come to court unprepared; it is good that we now have the CLAO. If these poor people are the offended parties, does the sponsor believe they could afford to hire a good lawyer to prepare them a petition for review on *certiorari* to show the Supreme Court that the decision was manifestly against the evidence and with grave abuse of discretion amounting to lack or excess of jurisdiction? Only the right litigants could afford that. Very few rich litigants get convicted, Mr. Presiding Officer, because they either pay the victims or their families to settle the case or pay off the witnesses to silence them. As I said, Mr. Presiding Officer, from my little experience as a lawyer, it is these 95 percent poor people, who line up in courts waiting for their cases to be heard, that will be affected by this provision of giving the [S]tate the right to appeal.

In the 1971 Constitutional Convention where the same question was raised, Delegate Julias had this comment which turned the tide and resulted in the disapproval of giving the [S]tate the right to appeal —

There is reason to commend but the reasons against far outweigh the reasons in favor.

In the first place, it would tend to multiplicity of suits; it would increase the burden of the Supreme Court. Second, it would be expensive if we meet fiscals who have an exaggerated opinion of themselves and who have more professional pride or *amor propio* than gray matter [in] their heads.

Let me give an example: Here is a farmer or a poor laborer who is lucky because he was acquitted. But his opponent happens to be a millionaire who can afford to get a top-notch lawyer to prepare a petition for *certiorari*, so instead of enjoying his freedom after having languished in jail for two years or three years, he finds himself again exposed to the jeopardy of being convicted because of that appeal by the [S]tate.

I have heard the assurances of certain sponsors that he will be set free in the meanwhile. But the general rule is that while the appeal is pending, the judgment is not final and generally the accused would continue to languish in jail. Assuming he will be set free, the temptation to flee on the part of the accused who was found guilty is very great because he does not know whether he will be convicted again by the Supreme Court. Although there is a saying that the innocent is as bold as a lion while the wicked flees, that is not true in reality. A man who is afraid he might get convicted by the Supreme Court is tempted to flee.

...

> I, therefore, believe, that the mischief sought to be prevented by allowing the [S]tate to appeal due to occasional mistakes of the lower court in acquitting, perhaps, a guilty person is nothing compared to the mischief and injustice a poor accused will suffer. It will open the gates to endless appeals. It will clog the dockets of the Supreme Court which will be hard put in determining even preliminarily the existence of a ground that the decision was manifestly against the evidence and with grave abuse of discretion.
>
> Mr. Presiding Officer, why should we discourage appeal by the [S]tate? The controlling consideration is the inequality of the parties in power, situation and advantage in criminal cases where the government with its unlimited resources, trained detectives, willing officers and counsel learned in the law, stood arrayed against a single defendant unfamiliar with the practice of the courts, unacquainted with their officers or attorneys, often without means and frequently too terrified to make a defense, if he had one, while his character and his life, liberty, or property rested upon the result of the trial.
>
> Here is an accused who, after already suffering enough by undergoing a long and rigorous trial while languishing in jail, gets acquitted. Finally, the [S]tate appeals. Not even the most corrupt soul in the Judiciary, not even the most corrupt judge in the lower courts, could be so dismally insensitive as to pronounce the exculpation of a defendant without looking at the proof.
>
> Here is another reason[ ] the [S]tate should not be granted appeal. In the case of [*Greene v. United States*] ... it says [—]
>
> The underlying idea is that the State, with all its resources and powers, 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.
>
> I hope with these observations the sponsor will reconsider his proposal to allow the [S]tate to appeal.
>
> Thank you.[75]

In sum, the Court is implored to clarify that the exceptions to the *finality-of-acquittal* doctrine have a limited and narrow application to cases involving denial of due process to the prosecution, for the reasons above discussed. The Court is urged to specifically abandon the rulings in *Lagos* and

75. RECORD OF THE CONSTITUTIONAL COMMISSION NO. 28, at 463-64 (1986).

Go, and other cases similar to them, if any, and to safeguard the accused's right of repose by stressing that the rule is what was laid down by it in *People v. Ting*,[76] to wit —

> To reiterate, for an acquittal to be considered tainted with grave abuse of discretion, there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham. Accordingly, notwithstanding the alleged errors in the interpretation of the applicable law or appreciation of evidence that the [Regional Trial Court] and the CA may have committed in ordering respondents' acquittal, absent any showing that said courts acted with caprice or without regard to the rudiments of due process, their findings can no longer be reversed, disturbed and set aside without violating the rule against double jeopardy. Indeed, errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*. We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case cannot now be corrected because of the timely plea of double jeopardy. '[I]t bears to stress that the fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.'[77]

76. People v. Ting, G.R. No. 221505, Dec. 5, 2018, at 10-11, *available at* http://sc.judiciary.gov.ph/3830 (last accessed Aug. 15, 2020).

77. *Id.* at 10 (citing People v. Tan, 639 Phil. 402, 417 (2010)).