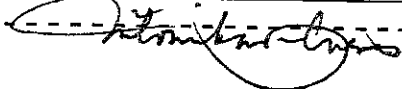


EN BANC

G.R. No. 256700 – PEOPLE OF THE PHILIPPINES, *petitioner*, versus
JOMERITO S. SOLIMAN, *respondent*.

Promulgated:

April 25, 2023

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SEPARATE OPINION

CAGUIOA, J.:

The penalty imposed upon respondent Jomerito S. Soliman (Soliman) has already attained finality, and can no longer be amended.

Based on the facts, Soliman was charged with Online Libel, defined and penalized under Section 4(c)(4) and 6 of Republic Act (R.A.) No. 10175, otherwise known as the *Cybercrime Prevention Act of 2012*, for a Facebook post against private complainant Waldo R. Carpio (Carpio), the then Assistant Secretary of the Department of Agriculture.¹ Soliman intended to convey in the said post that Carpio took favors and unduly delayed the release of Soliman's Sanitary and Phytosanitary Import clearance.²

In a Decision³ dated August 23, 2019, the Regional Trial Court, Branch 90, Quezon City (RTC) found Soliman guilty beyond reasonable doubt of Online Libel and imposed upon him a fine in the amount of ₱50,000.00 with subsidiary imprisonment in case of non-payment thereof.⁴ **Soliman paid the fine and no longer appealed his conviction.**⁵

Believing that the RTC committed grave abuse of discretion in imposing only a fine, the petitioner People of the Philippines (the People) filed a Petition for *Certiorari*⁶ before the Court of Appeals (CA), arguing that when a crime covered by the Revised Penal Code (RPC) is committed through the use of information and communication technologies, Section 6 of R.A. No. 10175 provides that the penalty shall be one (1) degree higher than that provided by the RPC.⁷ Libel under Article 355 of the RPC is punished by *prision correccional* in its minimum and medium periods, or a fine ranging from ₱200.00 to ₱6,000.00, or both.⁸ Thus, instead of a fine, the People claims

¹ *Rollo*, pp. 38-39, CA Decision.

² *Id.* at 38.

³ *Id.* at 55-69. Penned by Acting Presiding Judge Maria Luisa Lesle G. Gonzales-Betic.

⁴ *Id.* at 69.

⁵ *Ponencia*, p. 4.

⁶ *Rollo*, pp. 74-87, excluding Annexes.

⁷ *Ponencia*, p. 4.

⁸ SC Administrative Circular No. 08-2008 issued on January 25, 2008, entitled: "Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases."



that the impossible penalty for Online Libel is *prision correccional* in its maximum period to *prision mayor* in its minimum period.⁹

In a Decision¹⁰ dated October 30, 2020, the CA denied the Petition ruling that the RTC did not commit grave abuse of discretion in imposing only a fine. According to the CA, assuming that the penalty imposed was erroneous, this error was one of judgment and not of jurisdiction because it involves the court's appreciation of the facts and conclusions of law drawn from such facts.¹¹ The CA also ruled that the laws on libel did not remove the discretion of the courts to impose the penalty of only a fine.¹² The CA concluded that the People's Rule 65 petition against the RTC Decision violated Soliman's right against double jeopardy.¹³

The People then filed the present petition¹⁴ before the Court reiterating its arguments that: (1) a Rule 65 petition is a remedy to assail the erroneous penalty imposed by the RTC since this does not violate Soliman's right against double jeopardy; and (2) the RTC gravely abused its discretion when it imposed the penalty of a fine only as this was contrary to Section 6 of R.A. No. 10175.¹⁵

The *ponencia* rules that the present petition should be denied as the RTC did not gravely abuse its discretion since the laws on Libel and Online Libel allow the imposition of the penalty of fine as an alternative to imprisonment. Moreover, double jeopardy herein has attached.

I fully agree with the finding that the RTC correctly imposed the alternative penalty of fine and likewise concur with the guidelines set forth in the *ponencia*.

Further, I submit this Separate Opinion in order to emphasize that the prosecution can no longer file a special civil action of *certiorari* in order to correct an error in the penalty imposed by the lower court. By filing a Rule 65 Petition, the prosecution believes that when a trial court imposes an erroneous penalty, the same may be corrected through *certiorari* even though the conviction has already attained finality. This is wrong.

A petition for *certiorari* under Rule 65 of the Rules of Court is an extraordinary remedy which may be availed of only when the following requisites concur: (1) the tribunal, board, or officer exercises judicial functions; (2) such tribunal, board, or officer acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of

⁹ *Ponencia*, p. 4.

¹⁰ *Rollo*, pp. 37-52. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Marie Christine Azcarraga-Jacob and Tita Marilyn B. Payoyo-Villordon concurring.

¹¹ *Id.* at 42-43.

¹² *Id.* at 46-47.

¹³ *Ponencia*, p. 5.

¹⁴ *Rollo*, pp. 9-30, excluding Annexes.

¹⁵ *Ponencia*, p. 5.



jurisdiction; and (3) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.¹⁶ Its scope of review is narrow and limited only to errors of jurisdiction, to wit:

By comparison, nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. Likewise, **jurisprudence is also settled in defining the phrase “grave abuse of discretion” as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.** In some rare instances, the term “grave abuse” even refers to cases in which there has been a gross misapprehension of facts □ but only for the limited purpose of establishing the allegation of grave abuse of discretion. **Correspondingly, the term “without jurisdiction” means that the court acted with absolute lack of authority; while the term “excess of jurisdiction” means that the court transcended its power or acted without any statutory authority.** As such, petitioner has the burden of proof to show that the act of the public respondent in issuing the impugned order (or decision, in some cases) lacked or exceeded its jurisdiction because mere abuse is not enough — it must be grave. This is done by clearly showing, to the satisfaction of the reviewing court, the presence of caprice and arbitrariness in the exercise of discretion on the part of the inferior court or tribunal.

In seeking to utilize the benefit from a competent court’s corrective hand of *certiorari*, a petitioner must bear in mind that such procedural remedy is essentially supervisory and is specifically invoked to keep lower courts and other tribunals within the bounds of their jurisdiction. A *Writ of Certiorari* is an extraordinary remedy which may only be availed of when there is no appeal or when there is no plain, speedy and adequate remedy in the ordinary course of law. **Unlike the different modes of appeal, 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 lower court’s judgment — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision.** This is because a *Writ of Certiorari* is a remedy used to correct errors of jurisdiction — for which reason, it must clearly show that the public respondent had no jurisdiction to issue an order or to render a decision. Viewed in a different angle, such extraordinary *writ* is strictly confined to the determination of the propriety of the trial court’s jurisdiction — whether it had the authority to take cognizance of the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction. Therefore, the remedy itself is narrow in scope.¹⁷ (Emphasis supplied; italics in the original and citations omitted)

Thus, *certiorari* cannot be used to correct errors of judgment which the court may commit in the exercise of its jurisdiction. I quote with approval the discussion of the CA on the difference between an error of judgment and an error of jurisdiction, *viz.*:

¹⁶ *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 779 (2004).

¹⁷ *Denila v. Republic*, G.R. No. 206077, July 15, 2020, 943 SCRA 599, 646-648.

Further, the petitioner may not have thoroughly comprehended the matter of penalty imposition that is part and parcel of a judge's job in deciding a criminal action. It ought to be emphasized and reiterated that a mistake in the imposition of a penalty is truly an error of judgment and not an error of jurisdiction. The former, as shown above, is the subject of an ordinary appeal while the latter is properly the subject of a Rule 65 *certiorari* petition. In coming to the Court *via* Rule 65, the petitioner overlooked Rule 122 of the Revised Rules of Criminal Procedure which allows an appeal in a criminal action by either party (accused or prosecution) provided the right of an accused against double jeopardy is not infringed. Whether or not by design or inadvertence, the remedy sought, ought to have been contemplated well for it is not merely a statute or jurisprudence that stands in the way of the desired objective, but the very Constitution itself from which all laws and actions of men must flow.¹⁸

As correctly pointed out by the CA, the RTC herein had jurisdiction over both the criminal action and over the person of the accused. Thus, any alleged flaw in the penalty imposed constitutes merely an error of judgment.¹⁹ Thus, when this alleged error is questioned through a Rule 65 petition, this clearly violates the right of Soliman against double jeopardy.

Double jeopardy attaches when the following requisites 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 has pleaded; and (4) the accused was convicted by final judgment, or acquitted, or the case was dismissed without his express consent.²⁰

All these requisites are present in this case. Therefore, the penalty imposed can no longer be revisited without offending the right against double jeopardy notwithstanding any errors of judgment committed by the RTC. The judgment of conviction of Soliman, which he no longer appealed and has already attained finality, cannot be reopened by the People through a special civil action for *certiorari* because of the doctrine that nobody may be put twice in jeopardy for the same offense. To drive home the point, if Soliman were acquitted — even if the same be erroneous — the prohibition against double jeopardy bars the re-litigation of the case. Analogously, as Soliman's conviction is already final, then the judgment could no longer be questioned by the People.

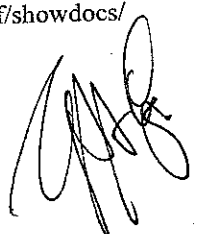
The case of *People v. Celorio*²¹ (*Celorio*) does not apply. This case presents a very narrow and limited instance wherein the extraordinary writ of *certiorari* was granted to correct clear errors of jurisdiction (*i.e.*, completely baseless penalty imposed by the trial court). In *Celorio*, the RTC therein imposed a non-existent penalty since the law on which it was based was already repealed. This was an error of jurisdiction because the court's

¹⁸ *Rollo*, pp. 50-51, CA Decision.

¹⁹ *Id.* at 41-43.

²⁰ *Rural Bank of Mabitac, Laguna, Inc. v. Canicon*, 834 Phil. 346, 362 (2018).

²¹ G.R. No. 226335, June 23, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67934>>.



jurisdiction to impose a penalty should be provided by an existing law. In the words of the Court, the imposition of a sentence based on a repealed law is actually a violation of the separation of powers and hence directly offends the Constitution:

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." It is an arbitrary act based on the judge's "will alone and not upon any course of reasoning and exercise of [lawful] judgment." 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. x x x[.]²² (Citations omitted)

Another example where the Court granted the extraordinary writ of *certiorari* is the 1995 case of *People v. Veneracion*,²³ (*Veneracion*) where what was deemed as grave abuse of discretion was the RTC judge's act of using his religious beliefs in imposing a penalty that had no basis in law since he did not want to impose the death penalty. Accused therein were convicted by the RTC judge for the crime of Rape with Homicide, but he imposed the penalty of *reclusion perpetua* despite the clear mandate of R.A. No. 7659 that the same be penalized by *death*. *Veneracion* was thus not a case wherein the judge was ignorant of the law; instead, it involved a judge who was fully aware of the proper penalty for the crime the accused was convicted, but deliberately refused to impose the same because of his personal religious convictions, *viz.*:

Clearly, under the law, the penalty imposable for the crime of Rape with Homicide is not *Reclusion Perpetua* but Death. While Republic Act 7659 punishes cases of ordinary rape with the penalty of *Reclusion Perpetua*, it allows judges the discretion — depending on the existence of circumstances modifying the offense committed — to impose the penalty of either *Reclusion Perpetua* **only** in the three instances mentioned therein. Rape with homicide is not one of these three instances. The law plainly and unequivocally provides that "[w]hen by reason or on the occasion of rape, a homicide is committed, the penalty shall be **death**." The provision leaves no room for the exercise of discretion on the part of the trial judge to impose a penalty under the circumstances described, other than a sentence of death.

We are aware of the trial judge's misgivings in imposing the death sentence because of his religious convictions. While this Court sympathizes with his predicament, it is its bounden duty to emphasize 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

²² Id.

²³ 319 Phil. 364 (1995).



by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy or morality of laws. x x x[.]²⁴ (Emphasis and italics in the original)

Thus, the Court ruled that the Rules of Court clearly mandate that judges should impose the proper penalty provided by law, regardless of their religious beliefs or political opinions.²⁵ It is a settled rule that courts are not concerned with the wisdom, efficacy, or morality of laws.

It is emphasized that these two cases are exceptional and are not applicable to the present case. Verily, since a judgment of conviction does not attain finality until after the reglementary period to appeal thereof has passed — and consequently, the first jeopardy will not attach until such time — then an appeal, not a petition for *certiorari*, is the proper remedy available to the People to assail a judgment of conviction that imposes an erroneous penalty. Thus, the rule is that the prosecution cannot seek the increase of the penalty imposed in a final and executory judgment. To do so would be a violation of the constitutional right of the accused against double jeopardy. This has been consistently applied by the Court in numerous occasions.

In *People v. Court of Appeals*,²⁶ (*People v. CA*) the Court dismissed the petition for *certiorari* filed by the People seeking to reinstate the penalty of imprisonment imposed by the RTC against the accused therein after the CA deleted the same and instead imposed a fine of ₱200,000.00 for each violation of Batas Pambansa Blg. 22. The Court refused to modify the penalty since the CA decision had already attained finality and consequently double jeopardy had already attached. The Court emphasized that whatever error may have been committed by the CA was merely an error of judgment and not of jurisdiction. Even assuming that the CA erroneously substituted the penalty of imprisonment with a fine, this can no longer be corrected.

In *Heirs of Tito Rillorta v. Judge Firme*²⁷ (*Rillorta*), private complainants in the case sought to increase the civil indemnity imposed against accused because they believed that he should have been found guilty of homicide instead of only less serious physical injuries. The Court ruled that an accused may not be convicted of a more serious offense or sentenced to a higher penalty in order to justify the increase in the civil indemnity. This is not permitted under the constitutional prohibition against double jeopardy. The Court stressed that if the government itself cannot appeal, much less then can the offended party, or his or her heirs.

Similar to *Rillorta*, private complainant in *De Vera v. De Vera*²⁸ (*De Vera*) prayed, via a special civil action for *certiorari* before the CA, for the increase of the penalty imposed by the trial court against the accused who was convicted of Bigamy. Private complainant sought the modification of the

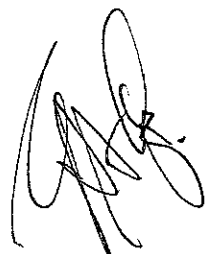
²⁴ Id. at 372-373.

²⁵ See id. at 374.

²⁶ 552 Phil. 245 (2007).

²⁷ 241 Phil. 554 (1988).

²⁸ 602 Phil. 877 (2009).



RTC's judgment of conviction based on the theory that it had erroneously applied the mitigating circumstance of voluntary surrender. Meanwhile, accused sought for and was granted probation. When private complainant's petition was denied by the CA, she sought recourse to the Court which affirmed the CA's decision. Private complainant's petition was denied because she sought an increase of the penalty which the RTC imposed, and would resultantly place the accused in double jeopardy. The Court also emphasized the exceptional nature of *Veneracion*, viz.:

Indeed, a petition for *certiorari* may be resorted to on jurisdictional grounds. **In *People v. Veneracion*, we entertained the petition for *certiorari* initiated by the prosecution to resolve the issue of whether the RTC gravely abused its discretion in imposing a lower penalty.** In that case, the trial judge, fully aware of the appropriate provisions of the law, refused to impose the penalty of death because of his strong personal aversion to the death penalty law, and imposed instead *reclusion perpetua*. In resolving the case in favor of the prosecution, the Court concluded that the RTC gravely abused its discretion, and remanded the case to the trial court for the imposition of the proper penalty. By so doing, we allowed a modification of the judgment not on motion of the accused but through a petition initiated by the prosecution. **But it was an exceptional case. Here and now, we reiterate the rule that review is allowed only in apparently void judgments where there is a patent showing of grave abuse of discretion amounting to lack or excess of jurisdiction. The aggrieved parties, in such cases, must clearly show that the public respondent acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.**²⁹ (Emphasis supplied; italics in the original and citations omitted)

In *Tan v. People*,³⁰ (*Tan*) the accused therein was also convicted of Bigamy by the RTC. He no longer appealed his conviction and instead applied for probation which the RTC granted. However, the prosecution, by motion, sought modification of the penalty imposed claiming that it was erroneous since the RPC provided a higher penalty. The RTC granted the prosecution's motion and increased the penalty. Accused then appealed before the CA, but his appeal was dismissed. When the case was elevated before the Court, the Court ruled that when accused filed for probation, he had waived his right to appeal and thus rendered the earlier verdict of the RTC final and executory, and thus no longer subject to amendment or modification. Therefore, the RTC's subsequent order increasing the penalty after it had previously granted the application for probation of accused violated his right against double jeopardy.

People v. CA, Rillorta, De Vera, and *Tan* illustrate the clear rule that a final judgment of conviction cannot be reopened by the People through a special civil action for *certiorari* because of the doctrine that nobody may be put twice in jeopardy for the same offense. I wish to stress that the cases of *Celorio* and *Veneracion* are of exceptional nature and cannot blanketly be used as basis to correct erroneous penalties imposed against an accused.

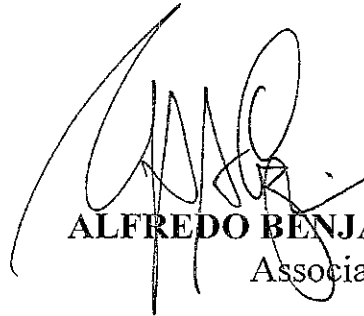
²⁹ Id. at 885-886.

³⁰ 430 Phil. 685 (2002).



To summarize, it is immaterial in this case whether the RTC correctly imposed the penalty of a fine only. The fact remains that Soliman's right against double jeopardy has already attached by the finality of the judgment of conviction.

Based on these premises, I vote to **DISMISS** the petition and **AFFIRM** the Decision dated October 30, 2020 and the Resolution³¹ dated May 31, 2021 of the Court of Appeals in CA-G.R. SP No. 162948.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³¹ *Rollo*, pp. 53-54.