

G.R. No. 193150 – LOIDA M. JAVIER, petitioner, versus PEPITO GONZALES, respondent.

Promulgated:

JAN 23 2017

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CONCURRING OPINION

CAGUIOA, J.:

I concur wholly with the *ponencia* as penned by Chief Justice Sereno. This opinion merely serves to further emphasize the exceptional circumstances which render the rule on double jeopardy particularly inapplicable to this case.

The rule on double jeopardy espouses that when a person is charged with an offense, and the case is terminated either by acquittal, conviction or any other manner without the consent of the accused, he cannot be charged again with the same or identical offense.¹

For double jeopardy to attach, the following elements must concur: (i) the information against the accused must have been valid, sufficient in form and substance to sustain a conviction of the crime charged, (ii) the information must have been filed with, and judgment rendered by, a court of competent jurisdiction, (iii) the accused must have been arraigned and had pleaded, and (iv) the accused must have been convicted or acquitted, or the case must have been dismissed without his express consent.²

In order to satisfy the fourth element, it is necessary that the prior judgment of conviction, acquittal or dismissal be valid, and rendered by a court of competent jurisdiction.

In this case, it has been established that: (i) respondent was duly notified of the December 15, 2015 hearing scheduled for the promulgation of Judge Buted's decision, (ii) respondent was absent during said hearing despite due notice, (iii) notwithstanding his absence, respondent was represented by his counsel in said hearing, (iv) Judge Buted promulgated his decision convicting respondent in accordance with Section 6, Rule 120, which allows promulgation of judgment *in absentia*, (v) Judge Buted immediately ordered the transmission of the case records to the CA for automatic review as respondent's conviction involved the imposition of the death penalty, (vi) respondent's counsel thereafter filed an Omnibus Motion

¹ *Villareal v. People*, 680 Phil. 527, 555 (2012).

² *Wilfred N. Chiok v. People of the Philippines*, G.R. Nos. 179814 & 180021, December 7, 2015, p. 11.



with the RTC praying that the conviction be set aside, and (vii) Judge Soluren, the new presiding judge of the RTC, subsequently granted the Omnibus Motion, set aside respondent's conviction, and issued an order acquitting respondent.

Proceeding from these facts, the *ponencia* holds that the order of acquittal issued by Judge Soluren is void and has no legal effect. The *ponencia* thus orders the reinstatement of respondent's conviction, finding the rule on double jeopardy inapplicable to this case.

I agree.

In the case of *Villareal v. People*,³ the Court convicted four (4) of the accused thereunder for the crime of reckless imprudence resulting in homicide, despite their previous conviction for the lesser crime of slight physical injuries. The Court found that the extraordinary circumstances of the case precluded the application of the rule on double jeopardy:

The CA's application of the legal framework governing physical injuries — punished under Articles 262 to 266 for intentional felonies and Article 365 for culpable felonies — is therefore tantamount to a whimsical, capricious, and abusive exercise of judgment amounting to lack of jurisdiction. According to the Revised Penal Code, the mandatory and legally imposable penalty in case the victim dies should be based on the framework governing the destruction of the life of a person, punished under Articles 246 to 261 for intentional felonies and Article 365 for culpable felonies, and not under the aforementioned provisions. We emphasize that these two types of felonies are distinct from and legally inconsistent with each other, in that the accused cannot be held criminally liable for physical injuries when actual death occurs.

Attributing criminal liability solely to Villareal and Dizon — as if only their acts, in and of themselves, caused the death of Lenny Villa — is contrary to the CA's own findings. From proof that the death of the victim was the cumulative effect of the multiple injuries he suffered, the only logical conclusion is that criminal responsibility should redound to all those who have been proven to have directly participated in the infliction of physical injuries on Lenny. The accumulation of bruising on his body caused him to suffer cardiac arrest. **Accordingly, we find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding Tecson, Ama, Almeda, and Bantug criminally liable for slight physical injuries. As an allowable exception to the rule on double jeopardy, we therefore give due course to the Petition in G.R. No. 154954.**⁴ (Emphasis and underscoring supplied)

In this case, Judge Soluren issued the order of acquittal *after* a prior judgment of conviction had been validly promulgated. Moreover, she issued said order after the records of the case were transmitted to the appellate court

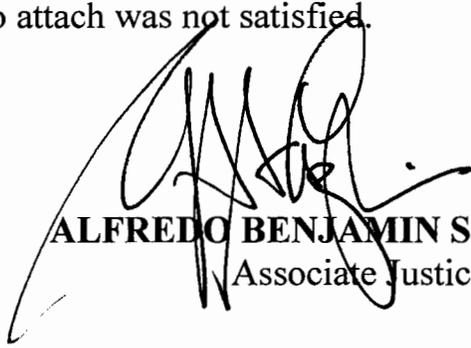
³ Supra note 1.

⁴ Id. at 562.



for automatic review. Not only did Judge Soluren completely disregard a decision validly promulgated in accordance with the Rules of Court, she subverted the same by issuing an opposing judgment after the RTC had already lost jurisdiction over the case.

These exceptionally “unusual” circumstances show that the order of acquittal was void from the beginning, as indeed, this patently erroneous judgment was issued without any jurisdiction. Thus, the fourth element necessary for double jeopardy to attach was not satisfied.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice