EN BANC

[G.R. No. 127444. September 13, 2000.]

PEOPLE OF THE PHILIPPINES, *petitioner*, ***vs.*** **HON. TIRSO D. C. VELASCO in his capacity as the Presiding Judge, RTC-Br. 88, Quezon City, and HONORATO GALVEZ**, *respondents*.

D E C I S I O N

BELLOSILLO, *J* :

This case nudges the Court to revisit the doctrine on double jeopardy, a revered constitutional safeguard against exposing the accused to the risk of answering twice for the same offense. In this case, after trial on the merits, the accused was acquitted for insufficiency of the evidence against him in the cases for murder and frustrated murder (although his co-accused was convicted), and finding in the illegal carrying of firearm that the act charged did not constitute a violation of law. But the State through this petition for *certiorari* would want his acquittal reversed.

We narrate a brief factual backdrop.

The idyllic morning calm in San Ildefonso, Bulacan, a small town north of Manila, was shattered by gunshots fired in rapid succession. The shooting claimed the life of young Alex Vinculado and seriously maimed his twin brother Levi who permanently lost his left vision. Their uncle, Miguel Vinculado, Jr. was also shot. A slug tunneled through his right arm, pierced the right side of his body and burrowed in his stomach where it remained until extracted by surgical procedure.

As a consequence, three (3) criminal Informations — one (1) for homicide and two (2) for frustrated homicide — were originally filed before the Regional Trial Court of Malolos, Bulacan, against Honorato Galvez, Mayor of San Ildefonso, and Godofredo Diego, a municipal employee and alleged bodyguard of the mayor. On 14 December 1993, however, the charges were withdrawn and a new set filed against the same accused upgrading the crimes to murder (Crim. Case No. 4004-M-93) and frustrated murder (Crim. Cases Nos. 4005-M-93 and 4006-M-93). Mayor Galvez was charged, in addition, with violation of PD 1866 (Crim. Case No. 4007-M-94) for unauthorized carrying of firearm outside his residence; hence, a fourth Information had to be filed.

After a series of legal maneuvers by the parties, venue of the cases was transferred to the Regional Trial Court of Quezon City, Metro Manila. There the cases were stamped with new docket numbers (Nos. Q-94-55484, Q-94-55485, Q-94-55486 and Q-94-55487, respectively), and raffled to Branch 103 presided over by Judge Jaime Salazar, Jr. In the course of the proceedings, the judge inhibited himself and the cases were re-raffled to respondent Judge Tirso D.C. Velasco of Branch 89.

On 8 October 1996 a consolidated decision on the four (4) cases was promulgated. The trial court found the accused Godofredo Diego guilty beyond reasonable doubt of the crimes of murder and double frustrated murder. However, it acquitted Mayor Honorato Galvez of the same charges due to insufficiency of evidence. It also absolved him from the charge of illegal carrying of firearm upon its finding that

the act was not a violation of law.

The acquittal of accused Honorato Galvez is now vigorously challenged by the Government before this Court in a Petition for *Certiorari* under Rule 65 of the Rules of Court and Sec. 1, Art. VIII, of the Constitution. It is the submission of petitioner that the exculpation of the accused Galvez from all criminal responsibility by respondent Judge Tirso Velasco constitutes grave abuse of discretion amounting to lack of jurisdiction. Allegedly, in holding in favor of Galvez, the judge deliberately and wrongfully disregarded certain facts and evidence on record which, if judiciously considered, would have led to a finding of guilt of the accused beyond reasonable doubt. Petitioner proposes that this patently gross judicial indiscretion and arbitrariness should be rectified by a re-examination of the evidence by the Court upon a determination that a review of the case will not transgress the constitutional guarantee against double jeopardy. It is urged that this is necessary because the judgment of acquittal should be nullified and substituted with a verdict of guilt.

The main hypothesis of the Government is that elevating the issue of criminal culpability of private respondent Galvez before this Tribunal despite acquittal by the trial court should not be considered violative of the constitutional right of the accused against double jeopardy, for it is now settled constitutional doctrine in the United States that the Double Jeopardy Clause permits a review of acquittals decreed by US trial magistrates where, as in this case, no retrial is required should judgment be overturned. [1] Since Philippine concepts on double jeopardy have been sourced from American constitutional principles, statutes and jurisprudence, particularly the case of *Kepner v. United States*, [2] and because similarly in this jurisdiction a retrial does not follow in the event an acquittal on appeal is reversed, double jeopardy should also be allowed to take the same directional course. Petitioner in this regard urges the Court to take a second look at *Kepner*, it being the "cornerstone of the battlement of the Double Jeopardy Clause" in the Philippines [3] and seriously examine whether the precedents it established almost a century ago are still germane and useful today in view of certain modifications wrought on the doctrine by the succeeding American cases of *United States v. Wilson* [4] and *United States v. Scott*. [5]

Two (2) threshold issues therefore, interlocked as they are, beg to be addressed. One is the propriety of *certiorari* as an extraordinary mode of review under Rule 65 of the Rules of Court where the result actually intended is the reversal of the acquittal of private respondent Galvez. The other is the permissibility of a review by the Court of a judgment of acquittal in light of the constitutional interdict against double jeopardy.

The recent untimely demise of respondent Galvez at the hands of alleged assassins (not discounting to the earlier dismissal of respondent judge from the service) may arguably have rendered these matters moot and academic, thus calling for a dismissal of the petition on this basis alone. The Court however is not insensitive to nor oblivious of the paramount nature and object of the pleas forcefully presented by the Government considering especially the alleged new directions in American jurisprudence taken by the doctrine of double jeopardy. We are thus impelled to respond to the issues advanced by petitioner for these bear unquestionably far-reaching contextual significance and implications in Philippine juristic philosophy and experience, demanding no less, explicit and definitive rulings.

For it may be argued from a historico-analytical perspective that perhaps none of the constitutionally ensconced rights of men has followed a more circuitous and tortuous route in the vast sea of jurisprudence than the right of a person not to be tried

or prosecuted a second time for the same offense. [6] This prohibition does not consist merely of one rule but several, each rule applying to a different situation, each rule marooned in a sea of exceptions. [7] It must have been this unique transpiration that prompted even the redoubtable Mr. Justice Rehnquist of the U.S. Supreme Court to remark in *Albernaz v. United States* [8] that "the decisional law (in the area of double jeopardy) is a veritable Sargasso Sea which could not fail to challenge the most intrepid judicial navigator." It is therefore necessary that, in forming a correct perspective and full understanding of the doctrine on double jeopardy and the rules so far established relative to the effect thereon of appeals of judgments of acquittal, a compendious review of its historical growth and development be undertaken. This approach is particularly helpful in properly situating and analyzing landmark interpretive applications of the doctrine in light of the varying legal and factual milieu under which it evolved.

Jeopardy, itself "a fine poetic word," [9] derives from the Latin *"jocus"* meaning joke, jest or game, [10] and also from the French term *"jeu perdre"* which denotes a game that one might lose. Similarly, the Middle English word *"iuparti"* or *"jupartie"* means an uncertain game. [11] The genesis of the concept itself however rests deep in the ancient Grecian view of tragedy and suffering and in the old Roman legal concepts of punishment. Greek law bound prosecutor and judge to the original verdict as can be seen in the remark of Demosthenes in 355 B. C. that "the laws forbid the same man to be tried twice on the same issue." [12] The Justinian Digest [13] providing that "(a) governor should not permit the same person to be again accused of crime of which he has been acquitted," [14] suggests certain philosophical underpinnings believed to have been influenced by works of the great Greek tragedians of the 5th century B.C. reflecting man's "tragic vision" or the tragic view of life. For the ancient Greeks believed that man was continuously pitted against a superior force that dictated his own destiny. But this prevailing view was not to be taken in the sense of man passing from one misfortune to another without relief, as this idea was repugnant to Greek sensibilities. Rather, it expressed a universal concept of catharsis or vindication that meant misfortune resolving itself into a final triumph, and persecution, into freedom and liberation. To suffer twice for the same misfortune was anathema to ancient thought.

The 18th century B. C. Babylonian king and lawgiver Hammurabi recognized that humans could err in prosecuting and rendering judgment, thus limits were needed on prosecutors and judges. A gruesome but effective way of preventing a second trial by the same prosecutor after an acquittal can be found in the first law of the Hammurabic Code: "If a man has accused a man and has charged him with manslaughter and then has not proved [it against him], his accuser shall be put to death." [15]

The repugnance to double trials strongly expressed by the Catholic Church is consistent with the interpretation by St. Jerome in 391 A. D. of the promise by God to his people through the prophet Nahum that "(a)ffliction shall not rise up the second time" [16] and "(t)hough I have afflicted thee, I will afflict thee no more." [17] Taken to mean that God does not punish twice for the same act, the maxim insinuated itself into canon law as early as 847 A. D., succinctly phrased as "(n)ot even God judges twice for the same act." [18]

The most famous *cause célèbre* on double jeopardy in the Middle Ages was the dispute between the English King Henry II and his good friend, Thomas á Becket, Archbishop of Canterbury. Henry wished to continue the observance of certain customs initiated by his predecessors called "*avitae consuetudines*," one of the known purposes of which was that clerics convicted of crimes before Church courts be delivered to lay

tribunals for punishment. He asserted in the Constitutions of Clarendon that the clergy were also subject to the king's punishment. This was met with stinging criticism and stiff opposition by the Archbishop who believed that allowing this practice would expose the clergy to double jeopardy. The issue between the two erstwhile friends was never resolved and remained open-ended, for Thomas was later on mercilessly murdered in his cathedral, allegedly at the instance of his king. [19]

It was in England though, a century ago, that double jeopardy was formally institutionalized "as a maxim of common law" [20] based on the universal principles of reason, justice and conscience, about which the Roman Cicero commented: "Nor is it one thing at Rome and another at Athens, one now and another in the future, but among all nations, it is the same." [21] But even as early as the 15th century, the English courts already began to use the term "jeopardy" in connection with the doctrine against multiple trials. [22] Thereafter, the principle appeared in the writings of Hale (17th c.), Lord Coke (17th c.) and Blackstone (18th c.). [23] Lord Coke for instance described the protection afforded by the rule as a function of three (3) related common law pleas: *autrefois acquit, autrefois convict* and pardon. [24] In *Vaux's Case*, [25] it was accepted as established that "the life of a man shall not be twice put in jeopardy for one and the same offense, and that is the reason and cause that *autrefois* acquitted or convicted of the same offense is a good plea x x x" Blackstone likewise observed that the plea of *autrefois acquit* or a formal acquittal is grounded on the universal maxim of the common law of England that "(n)o man is to be brought into jeopardy of his life more than once for the same offense. And hence, it is allowed as a consequence that when a man is once fairly found not guilty upon any indictment, or other prosecution before any court having competent jurisdiction of the offense, he may plead such acquittal in bar of any subsequent accusation for the same crime." [26]

The English dogma on double jeopardy, recognized as an "indispensable requirement of a civilized criminal procedure," became an integral part of the legal system of the English colonies in America. The Massachusetts Body of Liberties of 1641, an early compilation of principles drawn from the statutes and common law of England, grandly proclaimed that *"(n)o man shall be twice sentenced by Civil Justice for one and the same crime, offence or Trespasse*" and that "*(e)verie Action between partie and partie, and proceedings against delinquents in Criminal causes shall be briefly and distinctly entered on the Rolles of every Court by the Recorder thereof."* [27] Ineluctably, this pronouncement became the springboard for the proposal of the First Congress of the United States that double jeopardy be included in the Bill of Rights. It acknowledged that the tradition against placing an individual twice in danger of a second prosecution for the same offense followed ancient precedents in English law and legislation derived from colonial experiences and necessities. Providing abundant grist for impassioned debate in the US Congress, the proposal was subsequently ratified as part of the Fifth Amendment to the Constitution.

In 1817 the Supreme Court of Tennessee dismissed an appeal by the State after an acquittal from perjury, declaring that: "A writ of error, or appeal in the nature of a writ of error, will not lie for the State in such a case. It is a rule of common law that no one shall be brought twice into jeopardy for one and the same offense. Were it not for this salutary rule, one obnoxious to the government might be harassed and run down by repeated attempts to carry on a prosecution against him. Because of this rule, a new trial cannot be granted in a criminal case where the defendant is acquitted. A writ of error will lie for the defendant, but not against him." [28] Verily, these concepts were

founded upon that great fundamental rule of common law, "*Nemo debet bis vexari pro una et eadem causa*," in substance expressed in the Constitution of the United States as: "*Nor shall any person be subject for the same offense, to be twice put into jeopardy of life or limb*." It is in the spirit of this benign rule of the common law, embodied in the Federal Constitution — a spirit of liberty and justice, tempered with mercy — that, in several states of the Union, in criminal cases, a writ of error has been denied to the State. [29]

The relationship between the prohibition against second jeopardy and the power to order a new trial following conviction or dismissal stirred a no small amount of controversy in *United States v. Gibert*. [30] There, Mr. Justice Story, on circuit, declared that "the court had no power to grant a new trial when the first trial had been duly had on a valid indictment before a court of competent jurisdiction." The opinion formulated was that the prohibition against double jeopardy applied *equally* whether the defendant had been acquitted or convicted.

But it must be noted that even in those times, the power to grant a new trial in the most serious cases was already being exercised by many American courts, the practice having been observed from an early date, in spite of provisions of law against double jeopardy. [31] For this reason, the rule in *Gibert* was stoutly resisted. [32] As if to taunt *Gibert*, the 1839 case of *United States v. Keen* [33] declared that the constitutional provision did not prohibit a new trial on defendant's motion after a conviction. In *Hopt v. Utah*, [34] the defendant was retried three (3) times following reversals of his convictions.

Then in 1896 the U.S. Supreme Court in *United States v. Ball* [35] affirmed that the double jeopardy rule did not prevent a second trial when, on appeal, a conviction had been set aside. It declared that a defendant who procured on appeal a reversal of a judgment against him could be tried anew upon the same indictment or upon another indictment for the same offense of which he had been convicted. This principle of *autrefois convict* was expanded nine (9) years later in *Trono v. United States* [36] where the Court affirmed the judgment of the Supreme Court of the Philippines by holding that "since the plaintiffs in error had appealed their convictions of the lower offense in order to secure a reversal, there was no bar to convicting them of the higher offense in proceedings in the appellate court that were tantamount to a new trial." Mr. Justice Peckham, holding for the Court, concluded that "the better doctrine is that which does not limit the court or the jury upon a new trial, to a consideration of the question of guilt of the lower offense of which the accused was convicted on the first trial, but that the reversal of the judgment of conviction opens up the whole controversy and acts upon the original judgment as if it had never been." [37] It was ratiocinated that the result was justified not only on the theory that the accused had waived their right not to be retried but also on the ground that "the constitutional provision was really never intended to x x x cover the case of a judgment x x x which has been annulled at the request of the accused x x x"

It must be stressed though that *Ball* also principally ruled that it had 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 offense. 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."

In 1891 the United States Judiciary Act was passed providing that appeals or

writs of error may be taken from the district court or from the existing circuit courts direct to the Supreme Court in any case that involved the construction of the Constitution. The following year an issue was raised in *United States v. Sanges* [38] on whether this Act conferred upon the government the right to sue out a writ of error in any criminal case. In that case, existing rules on double jeopardy took a significant turn when the United States Supreme Court observed that while English law was vague on the matter, it had been settled by overwhelming American authority that the State had no right to sue out a writ of error upon a judgment in favor of the defendant in a criminal case, except under and in accordance with express statutes, whether that judgment was rendered upon a verdict of acquittal, or upon the determination by the court of a question of law. The Court noted that in a few states, decisions denying a writ of error to the State after a judgment for the defendant on a verdict of acquittal proceeded upon the ground that to grant it would be to put him twice in jeopardy, in violation of the constitutional provision. [39] *Sanges* therefore fixed the rule that absent explicit legislative authority, the United States Government had no right of appeal in criminal cases in case of an acquittal as it would expose the defendant twice to jeopardy.

Notably, however, in 1892 the Attorneys General of the United States began to recommend the passage of legislation allowing the Government to appeal in criminal cases. Their primary objective was to resist the power of a single district judge (under the law then obtaining) by dismissing an indictment to defeat any criminal prosecution instituted by the Government. No action was taken on the proposal until 1906 when President Theodore Roosevelt in his annual message to the US Congress demanded the enactment of legislation on the matter. Consequently, on 2 March 1907 such legislative authority was provided when the Criminal Appeals Act became a law [40] permitting the United States to seek a writ of error from the Supreme Court from any decision dismissing all indictment on the basis of the "invalidity or construction of the statute upon which the indictments is founded." [41] The law narrowed the right to appeal by the Government to cases in which the ground of the District Court's decision was invalidity or construction of the statute upon which the charge was founded, and that a verdict in favor of the defendant based on evidence could not be set aside on appeal no matter how erroneous the legal theory upon which it may be based. For these purposes, it made no difference whether the verdict be the result of the jury's decision or that of the judge. In other words, Government could appeal from a decision dismissing an indictment or arresting judgment on the basis of the statutory invalidity or misconstruction of the pertinent criminal statute and from a decision sustaining a special plea in bar, so long as the defendant would not be put in jeopardy. [42]

On 10 December 1898 the Philippine Islands was ceded by Spain to the United States by virtue of the Treaty of Paris of 1898 which was ratified by the State Parties on 11 April 1899. The Islands was placed under military rule until the establishment of the Philippine Commission in 1902. On 23 April 1900 the military government issued General Order No. 58 which amended the Code of Criminal Procedure then in force by, among others, extending to the Islands the double jeopardy provision under the Fifth Amendment of the US Constitution. This was pursuant to the 7 April 1900 Instructions of President McKinley issued to the Philippine Commission headed by William Howard Taft. The Instructions read in part: " x x x the Commission should bear in mind, and the people of the Islands should be made to understand, that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law x x x and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws of procedure with which they are familiar x x x Upon every division and branch

of the Government of the Philippines therefore must be imposed these inviolable rules: x x x that x x x no person shall be put twice in jeopardy for the same offense x x x" [43]

General Order No. 58 was amended by Act No. 194 which permitted an appeal by the government after acquittal. The Philippine Civil Government Act of 1 July 1902 of the U.S. Congress repealed the Act, adopted and restored the same principle in Gen. Order No. 58 as enunciated in the Fifth Amendment and in McKinley's Instructions by providing immunity from second jeopardy for the same criminal offense. It did not take long however for the meaning and significance of the doctrine held forth in McKinley's Instructions to be placed under severe test and scrutiny.

In 1901 Mr. Thomas E. Kepner, a practicing lawyer in Manila, Philippines, was charged with embezzlement of funds (*estafa*). He was tried by a court of first instance, minus a jury, and was acquitted of the crime. The U.S. Government appealed to the Supreme Court of the Philippine Islands and judgment was reversed. Kepner was sentenced with imprisonment and suspended from public office or place of trust.

Questioning his conviction before the US Supreme Court, Kepner argued that the appeal by the US government to the Philippine Supreme Court of his judgment of acquittal constituted double jeopardy construed in light of existing US jurisprudence. On the other hand, the Attorney General for the Philippines and the Solicitor General of the United States jointly contended that the Philippine Bill of 1 July 1902 which included the prohibition against double jeopardy should be construed from the perspective of the system of laws prevailing in the Philippines prior to its cession to the United States. Under this system, the *Audiencia* (Supreme Court) could entertain an appeal of a judgment of acquittal since the proceedings before it were regarded not as a new trial but an extension of preliminary proceedings in the court of first instance. The entire proceedings constituted one continuous trial and the jeopardy that attached in the court of first instance did not terminate until final judgment had been rendered by the *Audiencia*, Double jeopardy was described not only in the Spanish law *Fuero Real* [44] as: "After a man accused of any crime has been acquitted by the court, no one can afterwards accuse him of the same offense (except in certain specified cases), but also in the *Siete Partidas* [45] which provided that: "If a man is acquitted by a valid judgment of any offense of which he has been accused, no other person can afterwards accuse him of the offense x x x" Under this system of law, a person was not regarded as jeopardized in the legal sense until there had been a final judgment in the court of last resort. The lower courts then were deemed examining courts, exercising preliminary jurisdiction only, and the accused was not finally convicted or acquitted until the case had been passed upon in the *Audiencia* or Supreme Court, whose judgment was subject to review by the Supreme Court in Madrid (Spain) for errors of law, with power to grant a new trial.

The U.S. Supreme Court however threw out the Government's argument and held that the proceedings after acquittal had placed the accused Kepner twice in jeopardy. It declared in no uncertain terms that the appeal of the judgment of conviction was in essence a trial *de novo* and that, whatever the Spanish tradition was, the purpose of Congress was to carry some at least of the essential principles of American constitutional jurisprudence to the Islands and to engraft them upon the law of these people newly subject to its jurisdiction. There was little question therefore that *Kepner* soldered into American jurisprudence the precedent that as to the defendant who had been acquitted by the verdict duly returned and received, the court could take no other action than to order his discharge. "x x x (I)t is then the settled law of this court that

former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment. The protection is not x x x against the peril of second punishment, but against being tried again for the same offense." [46]

This doctrine was echoed in *United States v. Wills* [47] where the Court further clarified that "jeopardy implies an exposure to a lawful conviction for an offense of which a person has already been acquitted x x x" It was reiterated in 1957 in *Green v. United States* [48] in which Mr. Justice Black, writing for the Court, professed that the constitutional prohibition against double jeopardy was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense. Thus, under the Fifth Amendment, a verdict of acquittal was considered final, ending the accused's jeopardy and that once a person has been acquitted of an offense, he cannot be prosecuted again on the same charge.

American jurisprudence on the effect of appealed acquittals on double jeopardy since then sailed on, following the main sea lanes charted by *Kepner*, but not without encountering perturbance along the way. For it may be mentioned, albeit *en passant*, that the case of *Bartkus v. Illinois* [49] did cause some amount of judicial soul-shaking in 1959 when it burst into the scene. Alfonse Bartkus was tried before a federal district court in Illinois and was later acquitted by the jury. Less than a year later, Bartkus was indicted this time by an Illinois grand jury on facts substantially identical to those of the federal charge and was subsequently convicted. His conviction was affirmed by the Illinois Supreme Court.

On *certiorari*, the U.S. Supreme Court, by a close vote of 5 to 4, affirmed the conviction. The Court, speaking through Mr. Justice Frankfurter, declared that the Fifth Amendment's double jeopardy provision was inapplicable to states so that an acquittal of a federal indictment was no bar to a prosecution by a state based on the same charge. Since there was no proof offered to show that the participation of the federal authorities in the Illinois state prosecution was of such nature as to render the state proceedings a mere cover for a federal prosecution to render the state indictment essentially a constitutionally prohibited second prosecution, no double jeopardy attached.

Mr. Justice Black dissented, joined in by Mr. Chief Justice Warren and Mr. Justice Douglas, with Mr. Justice Brennan writing a separate dissenting opinion. Black rued that the Court's ruling by a majority of one only resulted in "further limiting the already weakened constitutional guarantees against double prosecution," citing the earlier case of *United States v. Lanza*, [50] where the Court allowed the federal conviction and punishment of a man previously convicted and punished for identical acts by a state court. The dissent called attention to the fact that in *Bartkus*, for the first time in its history, the Court allowed the state conviction of a defendant already acquitted of the same offense in the federal court. This, Mr. Justice Black asserted, was unacceptable, for as the Court previously found in *Palko v. Connecticut*, [51] "double prosecutions for the same offense are so contrary to the spirit of our free country that they violate even the prevailing view of the Fourteenth Amendment since some of the privileges and immunities of the Bill of Rights . . . have been taken over and brought within the Fourteenth Amendment by process of absorption x x x One may infer, from the fewness of the cases, that retrials after acquittal have been considered particularly obnoxious, worse even, in the eyes of many, than retrials after conviction."

Whether such forceful pronouncements steered back into course meandering views on double jeopardy is open to question. Nonetheless, the case of *Fong Foo v. United States*, [52] decided *per curiam*, reaffirmed the pronouncements in *Ball* and *Kepner* that "the verdict of acquittal was final, and could not be reviewed x x x without putting (the petitioners) twice in jeopardy, and thereby violating the Constitution."

In the meantime, from 1907 up to 1970 the Criminal Appeals Act underwent significant alterations. The 1942 amendment of its Section 682 permitted for the first time appeals to the circuit appeals court from orders sustaining demurrer to indictment in cases not directly appealable to the Supreme Court. [53] However, due to the many modifications the law was subjected to, construction and interpretation became more laborious, effectively transforming appeals into highly technical procedures. As such, the Criminal Appeals Act developed into a judicial "*bete noire*," for even the U.S. Supreme Court itself had "to struggle in a number of occasions with the vagaries of the said Act." [54] In one of those unhappy efforts, it concluded that the Act was "a failure x x x a most unruly child that has not improved with age." [55]

The U.S. Congress finally got rid of the dismal statute in 1970 and replaced it with a new Criminal Appeals Act intended to broaden the right of Government to appeal whenever the Constitution would permit. It was apparent that the legislative body left to the courts the prerogative to draw the constitutional limits of double jeopardy rather than define them itself. Since then, pronouncements by the courts on the double jeopardy guarantee of the Fifth Amendment focused on three (3) related protections: against a second prosecution for the same offense after acquittal; against a second prosecution for the same offense after conviction; and, against multiple punishments for the same offense. [56]

In *Wilson*, [57] the Court expressed that the interests underlying these three (3) protections are quite similar. Thus, when a defendant has been once convicted and punished for a particular crime, principles of fairness and finality require that he be not subjected to the possibility of further punishment by being tried or sentenced for the same offense. [58] And when a defendant has been acquitted of an offense, the Clause guarantees that the State shall not be permitted to make repeated attempts to convict him, "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." [59] It can thus be inferred from these cases that the policy of avoiding multiple trials has been considered paramount so that exceptions to the rule have been permitted only in few instances and under rigid conditions.

Accordingly, in *United States v. Scott* [60] the US Supreme Court synthesized two (2) venerable principles of double jeopardy jurisprudence: *first*, the successful appeal of a judgment of conviction on any ground other than the insufficiency of the evidence to support the verdict poses no bar to further prosecution on the same charge; and *second*, a judgment of acquittal, whether based on a jury verdict of not guilty or on a ruling by the court that the evidence is insufficient to convict, may not be appealed and terminates the prosecution when a second trial would be necessitated by a reversal. [61] It would seem that the conditionality of "when a second trial would be necessitated by a reversal" was attached thereto because ordinarily, the procedure obtaining was that if on appeal a judgment of acquittal is *reversed*, *i.e.,* a finding is had *against* the defendant, a remand of the case for another trial may be allowed if needed.

At this juncture, it must be explained that under existing American law and jurisprudence, appeals may be had not only from criminal convictions but also, in some limited instances, from *dismissals* of criminal charges, sometimes loosely termed "acquittals." But this is so *as long as the judgments of dismissals do not involve determination of evidence*, such as when the judge: (a) issues a post-verdict acquittal, *i.e.*, acquits the defendant on a matter of law after a verdict of guilty has been entered by a trier of facts (a jury); (b) orders the dismissal on grounds other than insufficiency of evidence, as when the statute upon which the indictment was based is defective; (c) conducts a judicial process that is defective or flawed in some fundamental respect, such as incorrect receipt or rejection of evidence, incorrect instructions, or prosecutorial misconduct; (d) issues an order arresting judgment, *i.e.,* an act of a trial judge refusing to enter judgment on the verdict because of an error appearing on the face of the record that rendered the judgment; [62] or, (e) pronounces judgment on a special plea in bar (a *non obstante* plea) — one that does not relate to the guilt or innocence of the defendant, but which is set up as a special defense relating to an outside matter but which may have been connected with the case. [63] Interestingly, the common feature of these instances of dismissal is that they all bear on questions of law or matters unrelated to a factual resolution of the case which consequently, on appeal, will not involve a review of evidence. Its logical effect in American law is to render appeals therefrom non-repugnant to the Double Jeopardy Clause.

This contextual situation in which appeals from dismissals of criminal cases are allowed under American rules of procedure does not obtain in the Philippines. To be sure, *United States v. Scott* positively spelled out that if an acquittal was based on an appreciation of the evidence adduced, no appeal would lie. Mr. Justice Rehnquist explained that what may seem superficially to be a "disparity in the rules governing a defendant's liability to be tried again" refers to the underlying purposes of the Double Jeopardy Clause. He elaborated that "(a)s *Kepner* and *Fong Foo* illustrate, the law attaches particular significance to an acquittal. To permit a second trial after an acquittal however mistaken x x x 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. x x x On the other hand, to require a criminal defendant to stand trial again after he has successfully invoked the statutory right of appeal to upset his first conviction is not an act of governmental oppression of the sort against which the x x x Clause was intended to protect."

In proposing a re-evaluation of Philippine jurisprudence on double jeopardy, petitioner insists that *Wilson* and *Scott* have unquestionably altered the seascape of double jeopardy previously navigated by *Kepner* and *Ball*. Using as its flagship the pronouncement in *Wilson* that appeals of acquittal are possible provided the accused will not be subjected to a second trial, it argues that this should apply to the case at bar because, anyway, a review of the acquittal of private respondent Honorato Galvez will not result in another trial inasmuch as the Court will only have to examine the evidence adduced below to pass final judgment on the culpability of the accused.

Petitioner's own hermeneutic sense of the phrase "*another trial*" is that which solely adverts to a proceeding before a competent trial court that rehears the case and receives evidence anew to establish the facts after the case has been finally disposed of by the Supreme Court. Obviously, it adheres to the Holmesian hypothesis in *Kepner* and, for that matter, the concept under Spanish law then applicable in the Philippines before the American colonization, that a trial consists of one whole continuing process

from reception of evidence by a trier of facts up to its final disposition by the Supreme Court. But petitioner conveniently forgets that this theory has been consistently spurned by both American and Philippine jurisprudence that has faithfully adhered to the doctrine that an appeal of a judgment after the defendant had been acquitted by the court in a bench trial is, quintessentially, a new trial. In *Kepner*, the Court regarded the two (2) events, *i.e.*, trial by the lower court and the appellate proceedings, as equivalent to two (2) *separate trials*, and the evil that the Court saw in the procedure was plainly that of multiple prosecutions. [64] Although *Kepner* technically involved only one proceeding, the Court deemed the second fact finding, that is, the review by the appellate court, as *the equivalent of a second trial*. Accordingly, in subsequent cases, the Court has treated the *Kepner* principle as being addressed to the evil of successive trials. [65]

No less than the case of *Wilson*, [66] petitioner's main anchor for its propositions, affirms this rule. There, the Court emphasized that it has, up to the present, rejected the theory espoused by the dissenting Mr. Justice Holmes in *Kepner* that "a man cannot be said to be more than once in jeopardy in the same cause however often he may be tried. The jeopardy is one continuing jeopardy, from its beginning to the end of the cause." It declared unequivocally that "we continue to be of the view that the policies underlying the Double Jeopardy Clause militate against permitting the Government to appeal after a verdict of acquittal." *Wilson* therefore pronounced that if acquittal is declared on the basis of evidence adduced, double jeopardy attaches for that particular cause.

To explain further, *Wilson* involved an appeal by Government of a *post-verdict ruling of law* issued by the trial judge resulting in the acquittal of the defendant due to pre-indictment delay (a delay between the offense and the indictment prejudiced the defendant) *after a verdict of guilty had been entered by the jury*. But it was not an acquittal that involved "factual resolution." It was one anchored on an extraneous cause. Factual resolution is defined in *United States v. Sorenson* [67] following the rulings in *Ball*, *Fong Foo* and *Sisson* as "*the finding that government failed to prove all the elements of the offense.*" It is clear therefore that the acquittal of *Wilson*, not being based on evidence, could be appealed. The rule therefore fixed in Wilson is that where a judge holds for the defendant on a ruling of law, and not on the basis of evidence, after a jury entered a verdict of guilty, the prosecution may appeal the acquittal without violating double jeopardy, as this is allowed under the pertinent law. [68] This is so since no second trial will ensue, as a reversal on appeal would merely reinstate the jury's verdict. [69] And if the prosecution is upheld, the case simply goes back to the trial court for disposition of the remaining matters. It bears emphasis that in *Wilson*, no double jeopardy problem was presented because the appellate court, upon reviewing the asserted legal errors of the trial judge, could simply order the jury's guilty verdict reinstated, no new fact-finding would be necessary, and the defendant would not be put twice in jeopardy. [70]

The case of *Scott*, also considerably relied upon by petitioner, involved an accused who, having been indicted for several offenses, himself moved for the dismissal of two (2) counts of the charges on the ground that his defense was prejudiced by pre-indictment delay. The trial judge granted the motion. Government appealed the dismissals but the appellate court rejected the appeal on the basis of double jeopardy. This time the US Supreme Court reversed, holding that "(w)here a

defendant himself seeks to avoid his trial prior to its conclusion by a motion for a mistrial, the Double Jeopardy Clause is not offended by a second prosecution. Such a motion by the defendant is deemed to be a deliberate election on his part to forego his valued right to have his guilt or innocence determined by the first trier of facts."

The inapplicability of this ruling to the case at bar is at once discernible. The dismissal of the charges against private respondent Galvez was not upon his own instance; neither did he seek to avoid trial, as it was in *Scott*, to be considered as having waived his right to be adjudged guilty or innocent. Here, trial on the merits was held during which both government and accused had their respective day in court.

We are therefore insufficiently persuaded to adopt petitioner's concept of "another trial" because, as discussed above, it disregards the contextual interpretation of the term in light of the legal and factual morphology of the double jeopardy principle obtaining in *Wilson* and *Scott*. To sum up, in the cause before us, the records show that respondent trial judge based his finding of acquittal, no matter how erroneous it might seem to petitioner, upon the evidence presented by both parties. The judgment here was no less than a factual resolution of the case. Thus, to the extent that the post-verdict acquittal in *Wilson* was based on a ruling of law and not on a resolution of facts, *Wilson* is not, to reiterate, pertinent to nor persuasive in the case at bar. The same observation holds true for *Scott*. That it was the defendant who secured the dismissal of the charges against him without any submission to either judge or jury as to his guilt or innocence, but on a ground totally outside evidentiary considerations, *i.e.*, pre-indictment delay, definitely forecloses the applicability, if not relevance, of Scott to the instant case.

Wilson, *Scott* and all other pertinent American case law considered, it still behooves us to examine if at this time there is need to rethink our juristic philosophy on double jeopardy *vis-á-vis* acquittals. In this respect, it would be instructive to see how Philippine law and jurisprudence have behaved since *Kepner*. Has the principle since then beneficially evolved, or has it remained an "unruly child that has not improved with age?"

The moorings of double jeopardy in the Philippines, as Mr. Justice Manuel Moran observed in *People v. Tarok* , [71] are not indigenous but are a matter of constitutional or statutory history. Enunciated in the Constitution of the United States, from there it found its way into this country, first, in the Philippine Bill of 1902, then in the Jones Law of 1916, and finally, in the 1935 Philippine Constitution. Being thus a mere recognition of the maxim of the common law, and adopted from the Constitution of the United States, the principle of double jeopardy followed in this jurisdiction the same line of development — no narrower nor wider — as in the Anglo-Saxon jurisprudence.

While some reservations may be had about the contemporary validity of this observation considering the variety of offsprings 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* , [72] *People v. Hernandez* , [73] *People v. Montemayor*, [74] *City Fiscal of Cebu v. Kintanar*, [75] *Republic v. Court of Appeals*, [76] and *Heirs of Tito Rillorta v. Firme*, [77] 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* [78] the Court warned that without this safeguard against double jeopardy secured in favor of the accused, his fortune, safety and peace of mind would be entirely at the mercy of the complaining witness who might repeat his accusation as often as dismissed by the court and whenever he might see fit, subject to no other limitation or restriction than his own will and pleasure.

The 1935 Philippine Constitution provided in its Sec. 20, Art. III, that "(n)o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." The discussions by the members of the Constitutional Convention of 1934 on the effect on double jeopardy of an appeal from a judgment of acquittal are enlightening. Foreclosing appeal on a judgment of acquittal was recognized by the Convention and the proposal to make an appeal from acquittal permissible even only "on questions of law provided that a verdict in favor of the defendant shall not be set aside by reason thereof" was strongly voted down. Thus —

MR. GULLAS:

> *Dear Colleagues x x x I wish to summarize our points. The amendment is commendable, but we submit that the reason against far outweighs the reason in favor of it. In the first place, it would tend to multiplicity of suits and thus increase the burden of the Supreme Court. Second, suits will be expensive if we meet fiscals who have an exaggerated opinion of themselves, who have more ego than gray matter or more amor propio. In the third place, as has been stated by a certain Gentleman, the provision would convert the Supreme Court into a sort of academy of consulting body. In the fourth place, as pointed out by Mr. Sevilla, fights in the Supreme Court would be one-sided. In the fifth place, as demonstrated by Delegate Labrador, the matter should be procedural rather than constitutional. And lastly, as explained by Delegate Singson Encarnacion, should the Supreme Court reverse the judgment of the lower court, the defendant would suffer morally for the rest of his life. He would walk around under a veil of humiliation, carrying with him a stigma.*
>
> *For all these reasons, Mr. President, we oppose the amendment.*

PRESIDENT:

> *We can vote on the amendment. (Various delegates: YES). Those who are in favor of the amendment please say YES. (A minority: YES). Those against the amendment say NO. (A majority: NO). The amendment is rejected x x x*

(1934 Constitutional Convention Record, Journal No. 95, November 24, 1934, p. 361)

The case of *People v. Bringas* [79] was the first case to be decided under this Constitution pertinent to the matter at hand. There the Supreme Court, guided by *Kepner*, cited its finding in *United States v. Tam Yung Way* [80] against the right of appeal by the government from a judgment discharging the defendant in a criminal case after he has been brought to trial, whether defendant was acquitted on the merits or

whether his discharge was based upon the trial court's conclusion of law that the trial had failed for some reason to establish his guilt as charged.

The Bill of Rights of the 1973 Constitution, specifically Sec. 22, Art. IV thereof, reproduced verbatim the same double jeopardy provision of the 1935 Constitution. So did the 1987 Freedom Constitution drafted by the 1986 Constitutional Commission.

Noteworthy is that during the deliberations by the 1986 Constitutional Commission attempts were made to introduce into the Fundamental Law the right of government to appeal verdicts of acquittal promulgated by trial courts. The proposed text for Sec. 14, Art. VIII, on the Judicial Department read as follows —

> SECTION 12. *x x x An appeal by the State and/or offended party from a judgment of acquittal may be allowed in the discretion of the Supreme Court by a petition for review on certiorari on the ground that it is manifestly against the evidence with grave abuse of discretion amounting to lack of jurisdiction.* [81]

This proposal was strongly opposed, the controlling consideration as expressed by Commissioner Rustico de los Reyes being 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, stands arrayed against a 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." [82]

Commissioner Joaquin Bernas likewise articulated his fear that "we could be subjecting an accused individual to a very serious danger of harassment from a prosecutor x x x The harm, however, which will follow from waving this flag of possibility of appeal x x x could be much more than letting a guilty person go." [83] Put to a vote, the proposal was defeated. [84]

Then again, during the debates on double jeopardy under Sec. 23, Art. III, on the Bill of Rights of the Constitution, Commissioner Ambrosio B. Padilla reopened the matter already settled at the deliberations on the article on the Judiciary. The following exchanges ensued:

MR. PADILLA:

> *x x x On Section 23, on double jeopardy, there was Davide resolution which allowed an appeal in a judgment of acquittal in a criminal case that states: An acquittal by a trial court is however, appealable provided that in such event, the accused shall not be detained or put up bad. This has been deleted by the Commission x x x*

FR. BERNAS:

> Yes.

MR. PADILLA:

> *I recall that when this same idea, but in different phraseology, was presented and approved by the Committee on the Judiciary, the great objection was that it would violate the immunity against double jeopardy. But I recall, the sponsor admitted, after I had explained the day before, that it did not violate double jeopardy but it was unnecessary and harmful.*

What is the real position, Mr. Presiding Officer? Is it in violation of double jeopardy or is it just because it need not be stated in the Bill of Rights nor in the Article on the Judiciary?

FR. BERNAS:

I explained my position on that, Mr. Presiding Officer, when we considered the matter in the Article on the Judiciary. The position I took was that it was not a departure from existing jurisprudence. In fact, it was more strict than existing jurisprudence in that it required not just abuse of discretion but it also required that the judgment be clearly against the evidence.

MR. PADILLA:

That is correct, Mr. Presiding Officer, because we want to make the exercise of that right by the state or offended party restrictive not only through a petition for review on certiorari in the discretion of the Supreme Court which may dismiss it outright, but also on certain grounds that are really covered by "in excess or lack of jurisdiction."

But my common impression, Mr. Presiding Officer, is that most lawyers are of the opinion that when a judgment of acquittal is rendered by a trial court, that is final, executory and not appealable.

Does not the sponsor think, Mr. Presiding Officer, an appeal from an arbitrary judgment of acquittal rendered by a few corrupt judges of the offended party or the state will improve the administration of justice?

FR. BERNAS:

Mr. Presiding Officer, I have expressed my position on this when we voted on Third Reading on the Article on the Judiciary. But if the Commissioner wants to raise the matter for reconsideration, he can present a motion on the floor.

Padilla did not ask for a reconsideration. [85]

The Rules of Court on Criminal Procedure relative to double jeopardy and the effect thereon of acquittals adhere strictly to constitutional provisions. The pertinent portions of Sec. 7 of Rule 117 thereof provide —

SECTION 7. *Former conviction or acquittal; double jeopardy* — *When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information x x x*

From this procedural prescription alone, there can be no mistaking the requisites for invoking double jeopardy: (a) a valid complaint or information; (b) before a competent court before which the same is filed; (c) the defendant had pleaded to the

charge; and, (d) the defendant was *acquitted*, or convicted, or the case against him dismissed or otherwise terminated without his express consent. [86] It bears repeating that where acquittal is concerned, the rules do not distinguish whether it occurs at the level of the trial court or on appeal from a judgment of conviction. This firmly establishes the finality-of-acquittal rule in our jurisdiction. Therefore, as mandated by our Constitution, statutes and cognate jurisprudence, an acquittal is final and unappealable on the ground of double jeopardy, whether it happens at the trial court level or before the Court of Appeals.

In general, the rule is that a remand to a trial court of a judgment of acquittal brought before the Supreme Court on *certiorari* cannot be had unless there is a finding of mistrial, as in *Galman v. Sandiganbayan*. [87] Condemning the trial before the Sandiganbayan of the murder of former Senator Benigno "*Ninoy*" Aquino, which resulted in the acquittal of all the accused, as a sham, this Court minced no words in declaring that "[i]t is settled doctrine that double jeopardy cannot be invoked against this Court's setting aside of the trial court's judgment of acquittal where the prosecution which represents the sovereign people in criminal cases is denied due process x x x [T]he sham 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 absolution as innocent of all the respondent-accused x x x Manifestly, 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. A dictated, coerced and scripted verdict of acquittal, such as that in the case at bar, is a void judgment. In legal contemplation, it is no judgment at all. It neither binds nor bars anyone. Such a judgment is 'a lawless thing which can be treated as an outlaw.' It is a terrible and unspeakable affront to the society and the people. 'To paraphrase Brandeis: If the authoritarian head of government becomes the lawbreaker, he breeds contempt for the law; he invites every man to become a law unto himself; he invites anarchy.' The contention of respondent-accused that the Sandiganbayan judgment of acquittal ended the case and could not be appealed or reopened without being put in double jeopardy was forcefully disposed of by *the Court in People v. Court of Appeals:* [88]

> x x x That is the general rule and presupposes a valid judgment. As earlier pointed out, however, respondent Court's Resolution of acquittal was a void judgment for having been issued without jurisdiction. No double jeopardy attaches, therefore. A void judgment is, in legal effect, no judgment at all. By it no rights are divested. Through it, no rights can be attained. Being worthless, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void x x x Private respondents invoke 'justice for the innocent.' For justice to prevail the scales must balance. It is not to be dispensed for the accused alone. The interests of the society which they have wronged, must also be equally considered. A judgment of conviction is not necessarily a denial of justice. A verdict of acquittal neither necessarily spells a triumph of justice. To the party wronged, to the society offended, it could also mean injustice. This is where the Courts play a vital role. They render justice where justice is due.

Thus, the doctrine that "double jeopardy may not be invoked after trial" may apply only when the Court *finds that the "criminal trial was a sham" because the prosecution representing the sovereign people in the criminal case was denied due process*. [89] The

Court in *People v. Bocar* [90] rationalized that the "remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy." [91]

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x" [92] Thus *Green* expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty." [93]

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." [94] 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. [95] 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. [96]

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. [97] This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled 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. [98] The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial proceeding. [99] As observed i n *Lockhart v. Nelson*, [100] "(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. [101]

Petitioner resists the applicability of the finality-of-acquittal doctrine to the Philippine adjudicative process on the ground that the principle is endemic to the American justice system as it has specific application only to jury verdicts of acquittal, and thus finds no valid use in our jurisdiction since the "underlying rationale of jury acquittals, a special feature of American constitutional law, has no parallel nor analogy in the Philippine legal system." This is a rather strained if not facile approach to the issue at hand, for it attempts to introduce the theory that insofar as the objective of fact-finding is concerned, fact-finding forming the core of the philosophy behind double jeopardy, there exists a difference between a jury acquittal and a "judge acquittal, Philippine version." To support its contention, petitioner sedulously explains that in the United States there is an "emerging consensus to differentiate the constitutional impact of jury verdicts of acquittal *vis-á-vis* judgments of acquittal rendered by the bench." While this consensus may have emerged in the United States, it is not difficult to surmise that it must have been so because of countless instances of conflict between

jury verdicts and judgments of trial judges in the same case. Resultantly, procedural statutes and jurisprudence have been wont to draw lines of distinction between the two, hopefully to keep each other at bay. Since this phenomenon does not occur in our jurisdiction, as we have no juries to speak of, petitioner's hypothesis is inappropriate.

Be that as it may, the invalidity of petitioner's argument lies in its focus on the *instrumentality* empowered to rule against the evidence, *i.e.*, the American jury *versus* the Philippine judge, no matter how emphatic it qualifies its proposition with the phrase "underlying rationale of jury acquittals," rather than on the essential function of fact-finding itself which consists of reception, sifting and evaluation of evidence. Where the main task of fact-finding is concerned, there exists no difference between the American jury and the Philippine trial judge. Both are *triers of facts*. This much petitioner has to concede. The attempt therefore to close the door on the applicability of the finality rule to our legal system abjectly fails when one considers that, universally, the principal object of double jeopardy is the protection from being *tried* for the second time, whether by jury or judge. Thus, "emerging American consensus on jury acquittals" notwithstanding, on solid constitutional bedrock is well engraved our *own* doctrine that acquittals by judges on evidentiary considerations cannot be appealed by government. The jurisprudential metes and bounds of double jeopardy having been clearly defined by both constitution and statute, the issue of the effect of an appeal of a verdict of acquittal upon a determination of the evidence on the constitutionally guaranteed right of an accused against being twice placed in jeopardy should now be finally put to rest.

Petitioner assails the decision rendered by the court *a quo* as blatantly inconsistent with the material facts and evidence on record, reason enough to charge respondent judge with grave abuse of discretion amounting to lack of jurisdiction resulting in a denial of due process. Citing *People v. Pablo*, [102] it alleges that "respondent aggravated his indiscretion by not x x x reviewing the evidence already presented for a proper assessment x x x It is in completely ignoring the evidence already presented x x x that the respondent judge committed a grave abuse of discretion." It adds that "discretion must be exercised regularly, legally and within the confines of procedural due process, *i.e.*, after evaluation of the evidence submitted by the prosecution. Any order issued in the absence thereof is not a product of sound judicial discretion but of whim and caprice and outright arbitrariness." [103]

Private respondent remonstrates against the propriety of petitioner's *certiorari* as a mode of impugning the judgment of acquittal not only as a strategy to camouflage the issue of double jeopardy but also for the fact that, contrary to petitioner's assertions, evidence in the case at bar was subjected to scrutiny, review, assessment and evaluation by respondent trial judge. By reason thereof, there cannot be perceived grave abuse of discretion on the part of the judge to warrant issuance of the great writ of *certiorari.*

We agree. The office of the common law writ of *certiorari* is to bring before the court for inspection the record of the proceedings of an inferior tribunal in order that the superior court may determine from the face of the record whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of the law. However, the original function and purpose of the writ have been so modified by statutes and judicial decisions. It is particularly so in the field of criminal law when the state is applying for the writ and problems arise concerning the right of the state to appeal in a criminal case. As a general rule, the prosecution cannot appeal or bring error proceedings from a judgment in favor of the defendant in a criminal case in the

absence of a statute clearly conferring that right. The problem comes into sharper focus when the defendant contends, in effect, that the prosecution is attempting to accomplish by the writ what it could not do by appeal, and that his constitutional rights are being thus encroached upon. [104]

Generally, under modern constitutions and statutes, provisions are available as guides to the court in determining the standing of the prosecution to secure by *certiorari* a review of a lower court decision in a criminal case which has favored the defendant. In most instances, provisions setting forth the scope and function of *certiorari* are found together with those relating to the right of the state to appeal or bring error in criminal matters. There is some indication that courts view the writ of *certiorari* as an appeal in itself where the applicant shows that there is no other adequate remedy available, [105] and it is not uncommon to find language in cases to the effect that the state should not be permitted to accomplish by *certiorari* what it cannot do by appeal. [106] Thus, if a judgment sought to be reviewed was one entered after an acquittal by a jury or the discharge of the accused on the merits by the trial court, the standing of the prosecution to review it by *certiorari* is far more likely to be denied than if it were such an order as one sustaining a demurrer to, or quashing the indictment, or granting a motion for arrest of judgment after a verdict of guilty. [107]

Philippine jurisprudence has been consistent in its application of the Double Jeopardy Clause such that it has viewed with suspicion, and not without good reason, applications for the extraordinary writ questioning decisions acquitting an accused on ground of grave abuse of discretion.

The petition at hand which seeks to nullify the decision of respondent judge acquitting the accused Honorato Galvez goes deeply into the trial court's appreciation and evaluation *in esse* of the evidence adduced by the parties. A reading of the questioned decision shows that respondent judge considered the evidence received at trial. These consisted among others of the testimonies relative to the positions of the victims *vis-á-vis* the accused and the trajectory, location and nature of the gunshot wounds, and the opinion of the expert witness for the prosecution. While the appreciation thereof may have resulted in possible lapses in evidence evaluation, it nevertheless does not detract from the fact that the evidence was considered and passed upon. This consequently exempts the act from the writ's limiting requirement of excess or lack of jurisdiction. As such, it becomes an improper object of and therefore non-reviewable by *certiorari.* To reiterate, errors of judgment are not to be confused with errors in the exercise of jurisdiction.

WHEREFORE, the instant petition for *certiorari* is **DISMISSED**.

SO ORDERED.

Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes and *De Leon, Jr., JJ.,* concur.

Davide, Jr., C.J., concurs and also with *Mr. Justice Panganiban* in his separate opinion.

Melo, J., in the result in view of the death of Mayor Galvez, although I must say that the discussion on double jeopardy and the separate opinion of Justice Panganiban are well taken.

Puno, J., I also agree with J. Panganiban's separate opinion.

Panganiban, J., Please see separate opinion.

Ynares-Santiago, J., is on leave.

Footnotes

1. Petition, p. 4; *Rollo*, p. 5.
2. 195 U.S. 100.
3. Petition, p. 24; *Rollo*, p. 25.
4. 420 U.S. 332, 43 L. Ed. 2d 232, 95 S. Ct. 1013.
5. 437 U.S. 82, 57 L. Ed. 2d 65, 98 S. Ct. 2187.
6. *Moss v. Jones*, Ky., 352 S.W. 2d 557-558.
7. *Notes and Comments, Twice In Jeopardy*, Yale L. J., Vol. 75 at 262.
8. 450 U.S. 333, 67 L. Ed. 2d 284.
9. Akhil Reed Amar, *Double Jeopardy Made Simple*, The Yale L. J., Vol. 106, Nos. 5 and 6, March-April 1997.
10. Webster's Third International Dictionary, 1961.
11. The Oxford English Dictionary, 214 (2d., 1989).
12. George C. Thomas III, *Double Jeopardy*, *The History, the Law*, New York University Press, 1998, p. 73.
13. Digest 48, 2.7.2., translated in Scott, *The Civil Law*, 17.
14. *Bartkus v. Illinois*, 309 U. S. 121, 3 L. Ed. 2d 706.
15. Thomas, *supra*.
16. 1 Nahum 9.
17. *Id*. at 12.
18. Bartkus, *supra*.
19. See Note 12, p. 74; The Catholic Encyclopedia, p. 678.
20. Cooley's Blackstone, 4th Ed., 1899.
21. Batcheldeer, *Former Jeopardy*, 17 Am. L. Rev. 735, cited in Bartkus, *supra*.
22. *Jeopardy During the Period of the Year Books*, 82 U Pa L. Rev. 602 (1934).
23. *Notes and Comments, Twice in Jeopardy*, Yale L. J., Vol. 75 at 262, 1965, Citing Sigler's A History of Double Jeopardy, 7 Am. J. Legal History, 283-297, 1963.
24. *Ibid*.

25. 4 Co. Rep. 44a, 45a.

26. 4 Bl Comm. 335, cited in *Green v. United States*, 355 U. S. 1842, L. Ed. 2d 199, 61 ALR 2d 1119.

27. Green, *supra*.

28. *State v. Reynolds*, 4 Hayw. (Tenn. 110).

29. *State v. Jone, Ga* 422, 424-425.

30. *2 Summ* 19, F. Case No. 15204, 1287, 1294-1303 (1834, CC Mass).

31. *United States v. Fries*, 1 L. Ed. 701.

32. *United States v. Williams*, (CC Me), 1 *Cliff* 5, F. Case No. 16707, pp. 636, 641.

33. (CC Ind) 1 McLean 429, F Case No. 155510, pp. 686, 687-690.

34. 104 U.S. 631.

35. 163 U.S. 662-671.

36. 199 U.S. 521, 50 L. Ed. 292, 26 S. Ct. 121.

37. *Id.*, at 533.

38. 144 U.S. 310-323.

39. *State v. Anderson, 3 Smedes* & M. 751; *State v. Hand*, 6 Ark. 169; *State v. Burris*, 3 Tex. 118; *Peo. v. Webb*, 38 Cal. 467; *Peo v. Swift*, 59 Mich. 529, 541.

40. Ch. 2564, 34 Stat. 1246.

41. *U.S. v. Scott*, 437 U.S. 82, 57 L. Ed. 2d 65, 98 S. Ct. 2187.

42. *U.S. v. Wilson*, 420 U.S. 332, 43 L. Ed. 2d 232, 95 S. Ct. 1013.

43. 1 Public Laws of the Philippine Commission, p. 66.

44. A.D. 1255, Lib. Iv., Title xxi, I 13.

45. A.D. 1263, Part vii, Title, i. XII.

46. *Ibid*.

47. 36 F 2d 855.

48. 355 U.S. 184, 2 L. Ed. 199, 78 S Ct. 221, 61 ALR 2d 1119.

49. 359 U.S. 121, 3 L. Ed. 2d 684.

50. 260 U.S. 377, 67 L. Ed. 314, 43 S. Ct. 141.

51. 302 U.S. 319, 326, 82 L. Ed. 288, 58 S. Ct. 149.

52. 369 U.S. 141, 7 L. Ed. 2d 629, 82 S. Ct. 67.

53. *United States v. Wayne Pump Co*, III. 1942, 63 S. Ct. 191, 317 U.S. 200, 87 L. Ed. 184.

54. *United States v. Weller,* 401 U.S. 254.

55. Wilson, *supra*, citing *United States v. Sisson*, 399 U.S. 307, 26 L. Ed. 2d 608.

56. *North Carolina v. Pearce,* 395 U.S. 711, 23 L. Ed. 2d 656, 89 S. Ct. 2072.

57. 420 U.S. 332, 43 L. Ed. 2d 232, 95 S. Ct. 1013.

58. *Ex parte Lange*, 18 Wall 163, 21 L Ed 872; *In re Nielsen* 131 U.S. 176.

59. *Green v. U.S.*, 355 U.S. 1842, L. Ed. 2d 199, 61 ALR 1119.

60. *Ibid.*

61. *Id.*, 74.

62. *United States v. Sisson*, 399 U.S. 307, 26 L. Ed., 2d 608.

63. *Id.*, 652.

64. See Note 42.

65. *Stroud v. United States,* 251 U.S. 15, 18; 64 L. Ed. 103, 40 S. Ct. 50; *Palko v. Connecticut*, 302 U.S. 319, 326, 82 L. Ed., 288, 58 S. Ct. 149.

66. *Id.*, 246.

67. 504 Fed. Rep. 2d 410.

68. 18 USCS Sec. 3731.

69. *United States v. Jenkins*, 420 U.S. 332.

70. *Smalis v. Pennsylvania*, 476 U.S. 140, 90 L. Ed. 2d 116, 106 S. Ct. 1745.

71. 73 Phil. 260 (1941).

72. 70 Phil. 528 (1940).

73. 94 Phil. 49 (1953).

74. No. L-29599, 30 January 1969.

75. No. L-31842, 30 April 1970, 32 SCRA 601.

76. 202 Phil. 83 (1982).

77. G.R. No. 54904, 29 January 1988, 157 SCRA 518.

78. 2 Phil. 247 (1903).

79. See Note 72.

80. 21 Phil. 67 (1911).

81. Record of the Constitutional Commission, Vol. 1, p. 438.

82. *Id.*, 463-464.

83. *Id.*, 503.

84. *Id.*, 504.

85. Joaquin G. Bernas, S.J., *The Intent of the 1986 Constitution Writers*, Rex Book Store, 1995, pp. 231-235.

86. Rules on Criminal Procedure, Rule 117, Sec 7; *Paulin v. Gimenez,* G.R. No. 103323, 21 January 1993, 217 SCRA 386; *COMELEC v. Court of Appeals*, G.R. No. 108120, 26 January 1994, 229 SCRA 501; *People v. Court of Appeals and Maquiling,* G.R. No. 18986, 21 June 1999.

87. G.R. No. 72670, 12 September 1986, 144 SCRA 43.

88. G.R. No. 54641, 28 November 1980, 102 SCRA 450.

89. See Note 87.

90. G.R. No. L-27935, 16 August 1985, 183 SCRA 166.

91. *People v. Bocar*, No. L-27935, 16 August 1985, 138 SCRA 166.

92. *United States v. Sanges*, 144 U.S. 310.

93. 355 U.S. 1842, L. Ed. 2d 199, 61 ALR 2d 1119.

94. Stern, *Government Appeals of Sentences: A Constitutional Response to Arbitrary and Unreasonable Sentences,* 18 Am. Crim. L. Rev. 51, 69 [1980].

95. Paul Westen, *The Three Faces of Double Jeopardy: Reflections on Government Appeals of Criminal Sentences*, 78 Mich. L. Rev. 1001, 1018, 1022 [1980].

96. Comments, Tulane Law Review, The Proposed Federal Criminal Code and The Government's Right to Appeal Sentences: After The Supreme Court's Green Light — Dare We Proceed? [Vol. 56, No. 2, Feb. 1982, at p. 702].

97. *Crist v. Bretz*, 437 U.S. 28, 36.

98. Notes on Double Jeopardy, Mich. L. Rev. Vol. 94:1346, quoting *United States v. Jorn*, 400 U.S. 486.

99. George C. Thomas III, An Elegant Theory of Double Jeopardy, U. III. L. Rev. 827, 840 (1988).

100. 488 U.S. 33, 42.

101. *Arizona v. Washington*, 434 U.S. 497.

102. No. L-37271, 25 June 1980, 98 SCRA 289, 298.

103. Petition, p. 3, quoting *People v. Nano*, G.R. No. 94639, 23 January 1992, 205 SCRA 155, 161.

104. 91 ALR 2d 1101. See *State v. Todd*, 224 NC 776, 32 SE 2d 313; State ex rel. *Douglas v. Stratiner*, 119 Wash 667, 206 P. 353.

105. *United States v. Dickinson*, 213 U.S. 92, 53 L. Ed. 711, 29 S. Ct. 485.

106. See, Note 101.

107. *Ibid*.