



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-16-CRM-0129

Plaintiff,

For: Illegal Use of Public Funds
under Article 220 of the Revised
Penal Code (R.P.C.)

-versus-

**JOSEPH VICTOR G.
EJERCITO, LEONARDO G.
CELLES, ANDONI MIGUEL
L. CARBALLO, VINCENT
RAINIER M. PACHECO,
ANGELINO O. MENDOZA,
DANTE E. SANTIAGO,
ROLANDO M. BERNARDO,
GRACE C. PARDINES,
FRANCIS KEITH R.
PERALTA, EDGARDO V.
SORIANO, JANNAH A.
EJERCITO-SURLA,
FRANCISCO JAVIER M.
ZAMORA, & JOSEPH
CRISTOPHER T.
TORRALBA**

Accused,

PRESENT:

FERNANDEZ, S.J.*, *J.*, Chairperson
MIRANDA¹, &
MUSNGI², *JJ.*

Promulgated:

OCT 04 2017

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* J. Ponferrada, Chairperson of the 6th Division when the present incident was submitted for resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. [As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3].

¹ J. Ponferrada was the *Ponente* of the Decision dated August 10, 2017. In view of his retirement, J. Miranda, the only member of the 6th Division who participated in the resolution of the present incident, will be the

RESOLUTION

MIRANDA, J.:

This resolves: 1) the Prosecution's Motion for Reconsideration dated August 23, 2017; 2), accused Angelino O. Mendoza (Mendoza), Rolando M. Bernardo (Bernardo), and Francisco Javier M. Zamora's (Zamora) Comment dated September 7, 2017; and 3), accused Joseph Victor G. Ejercito (Ejercito), Leonardo G. Celles (Celles), Andoni Miguel L. Carballo (Carballo), Vincent Rainier M. Pacheco (Pacheco), Dante E. Santiago (Santiago), Grace G. Pardines (Pardines), Francis Keith R. Peralta (Peralta), Edgardo V. Soriano (Soriano), Jannah A. Ejercito-Surla (Ejercito-Surla), and Joseph Christopher T. Torralba's (Torralba) Comment dated September 13, 2017.

In its motion, the Prosecution, through the Office of the Special Prosecutor (OSP), assails the Decision dated August 10, 2017 granting the Demurrer to Evidence dated March 23, 2017, filed by accused Ejercito, Celles, Carballo, Pacheco, Santiago, Pardines, Peralta, Soriano, Ejercito-Surla, and Torralba, and the Demurrer to Evidence dated May 25, 2017, filed by accused Mendoza, Bernardo, and Zamora. The OSP claims that it was able to present sufficient evidence to prove the elements of the crime of Illegal Use of Public Funds under Article 220 of the R.P.C. In particular, the OSP argues that: 1) the testimonies of prosecution witnesses Liza San Juan Tiomico (Tiomico) and Alicia Cruz-Barazon (Cruz-Barazon), and the documentary evidence on record, prove that the calamity fund was actually used to purchase the firearms; 2) the calamity fund was only replenished at the end of the year to correct the supposed error in charging the purchase of the firearms to said calamity fund; 3) the calamity fund may only be used upon the declaration of a "state of calamity" by the Sanggunian concerned, which was not declared in this case; and 4) the enactment of City Ordinance Nos. 9, 10 and 19, and City Resolution No. 23, pursuant to Joint Circular (J.C.) No. 2003-1 and Joint Memorandum Circular (J.M.C) No. 2003-2 of the Department of Budget and Management (DBM) and Department of the Interior and Local Government (DILG), is violative of law. In sum, the OSP claims that the Court disregarded the evidence and misapplied the law in granting the demurrers to evidence and acquitting the accused of the crime of Illegal Use of Public Funds.

In their Comment dated September 7, 2017, accused Mendoza, Bernardo and Zamora cite parts of the testimonies of Tiomico and Barazon to prove that the purchase of the firearms was charged against the supplemental budget, and not from the calamity fund. They also claim that the purchase of

In their Comment dated September 13, 2017, accused Ejercito, Celles, Carballo, Pacheco, Santiago, Pardines, Peralta, Soriano, Ejercito-Surla, and Torralba, reiterate that the calamity fund remained intact at the end of 2008 because the payment of the firearms was actually charged against the general fund, and not from the calamity fund. Even if the purchase of the firearms was charged against the calamity fund, they claim that the said purchase was valid pursuant to J.C. No. 2003-1 and J.M.C. No. 2003-2 of the DBM and DILG. They also seek the protection against double jeopardy in opposing the reconsideration of the judgment of acquittal.

The Court denies the motion for lack of merit.

A judgment of acquittal is immediately final and executory upon its promulgation.³ As a general rule, it can neither be appealed nor reconsidered because it will place the accused under double jeopardy.⁴

The protection of the accused against double jeopardy is enshrined in our Constitution, particularly Section 21, Article III thereof:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. x x x

This right is also found in Section 7, Rule 117 of the Rules of Criminal Procedure, which provides:

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

For double jeopardy to attach, the following requisites must be shown: 1) the first jeopardy must have attached prior to the second; 2) the first jeopardy must be terminated; and 3) the second jeopardy must be for the same offense as that in the first.⁵

The first jeopardy attaches under these conditions: 1) the accused has been arraigned; 2) upon a valid complaint or information; 3) in a court of competent jurisdiction; and 4) after a valid plea to the complaint or information.⁶ The first jeopardy may be terminated either by the accused's acquittal, final conviction, dismissal of the case without his express consent, and dismissal of the case on the merits.⁷ The test to determine if the second offense charges the same as the first offense, is whether one offense is identical with the other, whether it is an attempt or frustration of the other, or whether one offense necessarily includes or is included in the other.⁸

In this case, the first jeopardy has attached after the arraignment of the accused before this Court, and the entry of their pleas of "not guilty" to a valid information for Illegal Use of Public Funds. The first jeopardy was terminated upon the order granting the accused's demurrers to evidence. **The order granting the demurrer to evidence filed by the accused is an adjudication on the merits of the case, and is tantamount to an acquittal.**⁹ Clearly, the reconsideration of the assailed decision and the further prosecution of the accused for the same offense of Illegal Use of Public Funds is violative of the constitutional prohibition on double jeopardy.

In *People v. Hon. Velasco*¹⁰, the Supreme Court explained the reason behind the constitutional prohibition on double jeopardy, in this wise:

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." 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**

⁵ Bernas, S.J., Fr. Joaquin, G. The 1987 Philippine Constitution: A Comprehensive Reviewer, 2006. Manila: Rex Book Store.

⁶ *Ibid.*, citing *People v. Ylagan*, G. R. No. 38443, November 25, 1933.

⁷ *Id.*

⁸ *Id.*

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."

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." **The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability.** With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. 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. The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, **"(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process."** Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair. (Citations omitted. Emphasis supplied)

The full power of the State is ranged against the accused in criminal cases. The constitutional prohibition on double jeopardy prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials.¹¹ It also precludes the State from successively retrying the accused in the hope of securing a conviction or a greater penalty.¹² An acquitted accused is entitled to the right of repose as a direct consequence of the finality of his acquittal.¹³

The prohibition on double jeopardy admits of the following exceptions: 1) deprivation of due process and mistrial; and 2) grave abuse of discretion under exceptional circumstances.¹⁴ However, these exceptions do not exist in this case. While the Prosecution ascribes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of this Court, this issue is not a proper subject of a motion for reconsideration.

Finally, the Court finds nothing new in the arguments raised by the Prosecution in its motion. The grounds relied upon are a mere rehash or reiteration of the grounds and arguments already passed upon and resolved by the Court in the assailed decision. The Court finds no cogent reasons to deviate from its original finding that the evidence presented by the Prosecution is insufficient to warrant the conviction of the accused of the crime of Illegal Use of Public Funds.

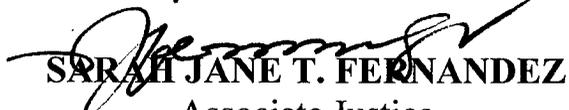
WHEREFORE, the Motion for Reconsideration dated August 23, 2017 of the Prosecution is **DENIED**.

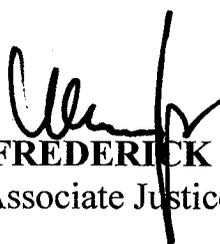
SO ORDERED.


KARL B. MIRANDA
Associate Justice

WE CONCUR:

*I concur. The accused
will be placed in double jeopardy.*


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice

¹¹ *People v. Court of Appeals*, G. R. No. 159261, February 21, 2007.

¹² *Id.*