Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Petitioner,

- *versus* -

DOMINGO ARCEGA y SIGUENZA,
Respondent.

x----------x

G.R. No. 237489

Present:

PERALTA, *C.J.*, *Chairperson*,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:

AUG 27 2020

DECISION

PERALTA, *C.J.*:

Before us is a petition for review on *certiorari* filed by the People of the Philippines, through the Office of the Solicitor General, which seeks to reverse and set aside the Decision[1] dated August 7, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR No. 38800, which modified respondent's conviction for attempted rape to acts of lasciviousness. Also assailed is the CA Resolution[2] dated February 12, 2018 which denied petitioner's motion for reconsideration.

In an Information[3] dated June 29, 2010, respondent Domingo Arcega y Siguenza was charged in the Regional Trial Court (*RTC*) of Iriga City with attempted rape, the accusatory portion of which reads:

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1 Penned by Associate Justice Romeo F. Barza (Chairperson), with Associate Justices Myra V. Garcia-Fernandez and Pablito A. Perez concurring; *rollo*, pp. 39-51.

2 *Id.* at 53-59.

3 *Id.* at 77.

> That at about 8:00 o'clock in the evening of April 25, 2010, at Brgy. [redacted], Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully, and feloniously, with lewd design, through force or intimidation, against her will and without her consent, did then and there willfully, unlawfully and knowingly waited for her to pass by after she took a bath at their neighbor's deep well, while accused was already naked, waylaying the complainant [AAA],[4] 19 years old, on the grassy portion on her way to their house, by delivering a fistic blow on her nape, covering her mouth, giving her a fistic blow on her right eye causing her to fall to the ground and while she was lying on the ground, accused placed himself on top of her already naked, which complainant tried to resist by kicking him on his private part thereby managing to displace him from his position and giving her the opportunity to run away, thus accused commenced the commission of the crime of RAPE by overt acts, but nevertheless did not produce it because of some cause or accident other than his own spontaneous desistance, that is, her tenacious resistance and the timely intervention of her aunt [BBB] who heard her shouts for help which caused accused to flee in a hurry, to the damage and prejudice of the herein offended party.[5]

On August 23, 2010, respondent, duly assisted by counsel, was arraigned and pleaded not guilty to the charge.[6] Pre-trial and trial thereafter ensued.

The antecedent facts are as follows:

At 8 o'clock in the evening of April 25, 2010, AAA, a resident of [redacted], Camarines Sur, asked permission from her aunt, BBB, to take a bath in the house of their neighbor, Inocencia Arcega, the mother of respondent.[7] The bathroom of Inocencia was located at the back of her house, *i.e.*, separate from the main house. It has a manual pump but had no electricity and roof with only the moon illuminating the night.[8]

After taking her bath for 15 minutes, AAA put on her shorts and T-shirt with no brassiere and went home. While walking, he smelled liquor, but

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4 The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "*An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes*"; Republic Act No. 9262, "*An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes*"; Section 40 of A.M. No. 04-10-11-SC, known as the "*Rule on Violence Against Women and Their Children*," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

5 *Rollo*, p. 77.

6 *Id.* at 78.

7 TSN, March 14, 2012, p. 3.

8 TSN, April 24, 2012, pp. 4-5.

did not see anyone.[9] Suddenly, someone boxed her nape which caused her pain.[10] Respondent then covered AAA's mouth with his hands, but the latter struggled and was able to remove his hands to shout for help.[11] AAA recognized respondent, who was totally naked, when she was able to remove the towel covering his face. Respondent punched her on her left eye which caused her to fall down.[12] Respondent then went on top of AAA, who was still wearing her t-shirt and shorts, and did "*kayos-kayos*" (*push-and-pull motion*).[13] Respondent was not able to remove her garments as she managed to roll over and kicked his testicles. Respondent, who was in pain, walked in a "*duck–like manner*"; and AAA took the chance and ran through a grassy portion towards their house.[14]

BBB, AAA's aunt, heard screams and saw AAA arrived trembling, shock, pale, crying and her hair disheveled. AAA informed her that respondent attempted to rape her, but she resisted and was able to run away. BBB immediately took a bolo and went to the place of the incident where she saw respondent, completely naked, limping while holding his groin. As fear struck her, BBB proceeded to the house of her sister CCC, AAA's mother,[15] and informed her of the incident. DDD, AAA's father, later learned about the incident, and looked for respondent who was nowhere to be found. AAA's parents submitted her to a medical examination and reported the incident to the police.[16]

On the other hand, respondent denied the accusation claiming that during the date and time of the alleged incident, he was with his wife at San Isidro, Magarao, Camarines Sur, a place four hours away from [redacted], taking care of his child who was then suffering from asthma attacks.[17] It was only on April 30, 2010 that he came back to [redacted], Camarines Sur.[18] He admitted that he and AAA's family are neighbors and there was no dispute between them. Mary Jane Arcega, respondent's wife, corroborated his alibi.

On May 26, 2016, the RTC of Iriga City, Branch 60, rendered a Judgment,[19] the dispositive portion of which reads:

> WHEREFORE, the foregoing premises considered and finding the accused Domingo Arcega GUILTY beyond reasonable doubt of the crime of attempted rape, he is hereby sentenced to an indeterminate sentence of two (2) years, four (4) months, and one (1) day of *prision correccional*

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9 *Id.* at 6.
10 *Id.*
11 *Id.* at 6-7.
12 *Id.* at 7.
13 TSN, December 4, 2012, p. 2.
14 TSN, May 16, 2012, pp. 9-11.
15 TSN, December 6, 2011, pp. 2-6.
16 TSN, May 16, 2012, p. 14.
17 TSN, November 4, 2014, p. 2.
18 *Id.* at 3.
19 *Id.* at 81-90; Per Judge Timoteo A. Panga, Jr.

> medium, as minimum, to ten (10) years of *prison mayor* medium, as its maximum. He is further adjudged liable to pay [AAA] P30,000.00 in moral damages, civil indemnity of P20,000.00, and exemplary damages of P20,000.00, all of which shall earn the interest of 6% *per annum* from the finality of this judgment until full payment.
>
> SO ORDERED.[20]

The RTC found the testimony of AAA to be trustworthy and credible and rejected respondent's denial and alibi. In convicting respondent of attempted rape, the RTC ruled:

> Here in the instant case, the accused gave the private complainant fistic blows twice. First at the back of the nape and when she shouted, the accused boxed her one eye. The accused did not stop there. He was already completely naked when he climbed on top of the private complainant. Although the victim still had her shorts and t-shirt on, the accused, after climbing on top of the private complainant did "*kayos-kayos*" (push and pull motion with his hips). When she freed herself from his clutches by rolling over and kicking the accused on the groin, she effectively ended his lewd designs on her. The inference therefore from such circumstances that rape as his intended felony is most logical and highly warranted, lust for and lewd designs towards the private complainant being fully manifest. When the accused boxed the private complainant twice, the clear intention was to render her unconscious or at least to stave off resistance. The violent acts preparatory to sexual intercourse are directly connected to rape as the intended crime and the acts taken together are unequivocal. Without the private complainant's most appropriate manner of resistance, *i.e.*, by kicking her attacker's groin, rape is the only and inevitable conclusion. Virgin at age 19, her having been able to summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity is commendable. What is most reprehensible is the attempt of the accused to commit bestiality on her on a road.[21]

Dissatisfied, respondent appealed the RTC Judgment to the CA. After the parties submitted their respective pleadings, the case was submitted for decision.

On August 7, 2017, the CA rendered its assailed Decision, the decretal portion of which reads:

> WHEREFORE, the Judgment dated 26 May 2016 of the Regional Trial Court, Branch 60, Iriga City, in Criminal Case No. IR-9344 is AFFIRMED with MODIFICATIONS. Accused-appellant Domingo Arcega y Siguenza is adjudged GUILTY beyond reasonable doubt of Acts of Lasciviousness under Art. 336 of the Revised Penal Code, and sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum[,] to four (4) years and two (2) months of *prision correccional*, as maximum. He is also ordered to pay AAA the amount of

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20 *Id.* at 90.

21 *Id.* at 88-89.

Php30,000.00 in moral damages, civil indemnity of Php20,000.00, and exemplary damages of Php20,000.00, all with 6% interest per annum upon the finality of this decision up to its full payment.

SO ORDERED.[22]

In finding respondent guilty of acts of lasciviousness only, the CA found:

A careful examination of the testimony of AAA will belie the accusation that the accused-appellant attempted to rape her. Her testimony will reveal the following:

x x x

THE COURT
Q. Why, what was the appearance of the accused or the attire of the accused when you first saw him?

THE WITNESS
A. He was totally naked.

Q. He was totally naked. After you succeeded in removing the towel which was covering his face and thereby saw him to be fully naked, did you recognize and having seen his face? (sic) Did you recognize if (sic) who he was?

x x x

A. Domingo Arcega y S[i]guenza.

x x x

PROS. RAMOS:
Q. Afterwards, after you recognized the accused as a person responsible for punching your nape and covering your mouth, what[,] if any, did he do?
A. He boxed me again hitting me on my left eye. Then, I fell down and that was the time when the accused went on top of me.

Q. You mean on top naked?
A. Yes, sir.

Q. How about you, how were your attire (sic)?
A. T-shirts and shorts.

Q. When the accused was already on top of you, what did you do to him, if any?
A. I resisted and I fought him.

x x x

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22 *Id.* at 50.

Q. Why did you say earlier that in reporting to your aunt that Arcega was attempting to rape you or to forcibly sexual attribute (sic)? Why did you say that that (sic) he wants to have sex with you.?

THE WITNESS
A. Because he had a plan and "*inabangan ako*"

Q. Why do you now say that "*inabangan ako*" or he planned of what happened?
A. Because of what he did to me, he was totally naked. He placed his hand on my mouth and covered his face with towel.

x x x

THE COURT
Clarification.

Q. When you said the accused attempted to rape you, was there any moment when he was able to remove your shorts?
A. No, sir.

Q. What about your shirt, was it ever removed?
A. No, sir.

x x x

THE COURT
Q50: Is it correct for this Court to say that on the basis of the complaint/information, the act of the accused in attempting to rape you was to place himself on top of you while he was totally naked, is that correct?
A50: Yes, your Honor.

Q51: What about you were you also totally naked?
A51: No, your Honor.

Q52: You have your dress covering yourself.
A52: Yes, your Honor.

x x x

Q56: Did he remove these clothes?
A56: No, your Honor.

As can be easily gleaned, AAA's testimony is bereft of proof that the accused-appellant attempted to introduce his organ (penis) to her vagina. Neither was there any testimony that the accused-appellant's penis touched any part of AAA's body. It must be emphasized that AAA is consistent in saying that she was wearing her shorts and t-shirt during the incident. In fact, the accused-appellant never attempted to remove AAA's clothes. All that was testified to by AAA was that the accused-appellant mounted her or went on top of her, covered her mouth, and did the "*kayos-kayos*" which act, again, did not clearly demonstrate the intent of the accused-appellant

to lie with her nor introduce his penis into her vagina. Interestingly, the attempt to rape was further belied by AAA when she stated that:

CONTINUATION OF DIRECT EXAMINATION BY PROS. RAMOS:

Q. AAA, what action, if any, of accused Domingo Arcega when he was naked and on top of you while you have just gone from the improvised bathroom? Tell the honorable court, what action, if any?
A. He was materbating (sic) "*kayos-kayos*." And while he was making "*kayos-kayos*" he was standing on top and holding his penis.

Q. Towards which portion of his organ was it directed in reference to your body?
A. In my vagina.[23]

x x x

For an accused to be convicted of acts of lasciviousness under the foregoing provision, the prosecution is burdened to prove the confluence of the following essential elements: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under 12 years of age.

All the above elements have been proven in this case. The act of the totally naked accused-appellant of mounting AAA, masturbating and performing "*kayos-kayos*," while his penis is directed towards the direction of AAA's vagina is a lewd act. "Lewd is defined as obscene, lustful, indecent or lecherous. It signifies that form of immorality related to moral impurity, or that which is carried on a wanton manner. Furthermore, in accomplishing the said act, the accused-appellant also employed force on AAA by hitting her on the back, and once down on the ground, covered her mouth and boxed her left eye.[24]

Petitioner filed a motion for reconsideration which was denied by the CA in a Resolution dated February 12, 2018. The CA reiterated its findings in the assailed decision, and also added that the absence of intent to have sexual intercourse was evident from the Information charging respondent as follows: "while she was lying on the ground, accused placed himself on top of her already naked which complainant tried to resist by kicking him on his private part thereby managing to displace him from his position and giving her the opportunity to run away." The CA also ruled that since respondent had already been acquitted of the crime of attempted rape, petitioner can no longer move for reconsideration and push for his conviction for the same offense as it would violate respondent's right against double jeopardy.

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23 *Id.* at 46-48.
24 *Id.* at 49.

Respondent had filed an application for probation with the RTC of Iriga City which the latter granted by issuing a Probation Order dated January 10, 2018. The RTC ordered the suspension of respondent's sentence and fixed the period of probation for two (2) years to be counted from Probationer's initial report for supervision and compliance with requirements provided in the Order.

The People of the Philippines, through the Solicitor General, filed the instant petition for review on *certiorari* on the ground that:

> THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR OF LAW WHEN IT MODIFIED RESPONDENT'S CONVICTION FOR ATTEMPTED RAPE, AND INSTEAD FOUND HIM GUILTY OF ACTS OF LASCIVIOUSNESS, CONSIDERING THAT THE CRIMINAL INTENT TO RAPE ON THE PART OF RESPONDENT HAS BEEN ESTABLISHED BY THE PROSECUTION BEYOND REASONABLE DOUBT.[25]

The Solicitor General argues that respondent's criminal intent to penetrate his erectile penis into the victim's vagina is clearly established in this case by the overt acts he committed. He claims that after punching and pinning down AAA, respondent mounted her and made "*kayos-kayos*" motions which clearly show his criminal intent to penetrate AAA's vagina, which is rape; that the crime of rape was not consummated not because of respondent's own spontaneous desistance but due to AAA's tenacious and vigorous resistance against the assault. The CA's reliance in *Cruz v. People*,[26] where we found the accused therein to be guilty only of acts of lasciviousness instead of attempted rape, was misplaced since the factual circumstances are not the same.

The Solicitor General contends that the CA's citation of *People v. Balunsat*[27] in denying its motion for reconsideration on the ground of violation of respondent's right against double jeopardy is also not applicable. The instant petition will not unjustly prejudice respondent's right against double jeopardy since what such right only proscribes is an appeal from the judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused. Here, the CA decision merely modified the RTC's judgment from attempted rape to acts of lasciviousness based on the wrong appreciation of facts which resulted in the erroneous conclusion and wrong application of the law.

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25 *Id.* at 20.
26 745 Phil. 54 (2014).
27 640 Phil. 139 (2010).

In his Comment, respondent claims, among others, that since the CA modified his conviction from attempted rape to acts of lasciviousness, the CA, in effect had already acquitted him of attempted rape; that such judgment of acquittal can only be assailed through a petition for certiorari under Rule 65 of the Rules of Court and not in a petition for review on *certiorari* under Rule 45, otherwise, respondent's right against double jeopardy would be violated.

The threshold issue to be resolved is whether petitioner may assail in this petition for review on *certiorari* the CA Decision which modified the RTC Judgment convicting respondent of attempted rape to acts of lasciviousness.

We answer in the negative.

In *People v. Balunsat*,[28] where the CA modified the accused-appellant's conviction from attempted rape to acts of lasciviousness, we held that since the CA had already acquitted the accused of attempted rape, a review of the downgrading of the crime will violate the respondent's right against double jeopardy. We stated as follows:

> Concerning Criminal Case No. 781-T, the Court of Appeals modified the guilty verdict of the RTC against Nelson from attempted rape to acts of lasciviousness. We can no longer review the "downgrading" of the crime by the appellate court without violating the right against double jeopardy, which proscribes an appeal from a judgment of acquittal or for the purpose of increasing the penalty imposed upon the accused. In effect, the Court of Appeals already acquitted Nelson of the charge of attempted rape, convicting him only for acts of lasciviousness, a crime with a less severe penalty. x x x.[29]

A judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.[30] The case of *People v. Hon. Velasco*[31] provides the reason for such rule, to wit:

> 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 attempts to convict an individual for

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28 *Supra* note 26.

29 *Id.* at 159-160.

30 *Villareal v. Aliga*, 724 Phil. 47, 62 (2014); *People v. Alejandro*, G.R. No. 223099, January 11, 2018, 851 SCRA 120, 127, citing *People v. Hon. Asis, et al.*, 643 Phil. 462, 469 (2010).

31 394 Phil. 517 (2000).

> 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.
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> 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.[32]

With the CA's modification of respondent's conviction from attempted rape to acts of lasciviousness, it has already acquitted respondent of attempted rape, which is already final and unappealable. Thus, double jeopardy has already set in and petitioner is already barred from filing the present petition for review on *certiorari* assailing respondent's acquittal of attempted rape on such ground.

While a judgment of acquittal may be assailed by the People through a petition for certiorari under Rule 65 without placing the accused in double jeopardy, however, it must be established that the court *a quo* acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. The People must show that the prosecution was denied the opportunity to present its case or where the trial was a sham, thus, rendering the assailed judgment void. It is their burden to clearly demonstrate that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[33]

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32 *Id.* at 555-557. (Citations omitted)

33 *People v. Atienza, et al.*, 688 Phil. 122, 135 (2012), citing *People v. Sandiganbayan (Third Division) et al.*, 661 Phil. 350, 355 (2011).

In *Villareal v. Aliga*,[34] we held that:

x x x The People may assail a judgment of acquittal only via petition for *certiorari* under Rule 65 of the *Rules*. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo*, the constitutional right of the accused against double jeopardy would be violated. The Court made this clear in *People v. Sandiganbayan (First Div.)*, thus:

x x x A petition for review on *certiorari* under Rule 45 of the Rules of Court and a petition for *certiorari* under Rule 65 of the Rules of Court are two and separate remedies. A petition under Rule 45 brings up for review errors of judgment, while a petition for *certiorari* under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. A petition for review under Rule 45 of the Rules of Court is a mode of appeal. Under Section 1 of the said Rule, a party aggrieved by the decision or final order of the Sandiganbayan may file a petition for review on *certiorari* with this Court:

> Section 1. *Filing of petition with Supreme Court.* - A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court, or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." The judgment that may be appealed by the aggrieved party envisaged in the Rule is a *judgment convicting the accused, and not a judgment of acquittal*. The State is barred from appealing such judgment of acquittal by a petition for review.

Section 21, Article III of the Constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense." The rule is that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the CA. Thus, the State is proscribed from appealing the judgment of acquittal of the accused to this Court under Rule 45 of the Rules of Court.

x x x x x x x x x

A judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the

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34 *Supra* note 30.

accused in double jeopardy. However, in such case, the People is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. No grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence. *Certiorari* will issue only to correct errors of jurisdiction, and not errors or mistakes in the findings and conclusions of the trial court.

The nature of *certiorari* action was expounded in *People v. Court of Appeals (Fifteenth Div.)*:

> x x x *Certiorari* alleging grave abuse of discretion is an extraordinary remedy. Its use is confined to extraordinary cases wherein the action of the inferior court is wholly void. Its aim is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. No grave abuse of discretion may be attributed to the court simply because of its alleged misappreciation of facts and evidence. While *certiorari* may be used to correct an abusive acquittal, the petitioner in such extraordinary proceeding must clearly demonstrate that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.

and further in *First Corporation v. Former Sixth Division of the Court of Appeals*:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* – beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. x x x It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.[35]
>
> x x x

However, the rule against double jeopardy is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances. x x x.[36]

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35 *Id.* at 59-62. (Citations omitted)

36 *Id.* at 64.

In this case, petitioner has not claimed that there was a denial of due process nor a mistrial. He, likewise, never argued that the CA gravely abused its discretion amounting to lack of jurisdiction in rendering its decision. In fact, these circumstances are not present in this case, thus, a petition for *certiorari* will not also lie. Notably, as the records show, petitioner was given ample opportunities to present their evidence and argue its case before the lower courts, and that the CA decision was arrived at after a meticulous consideration of the evidence on record.

WHEREFORE, based on the foregoing, the petition for review on *certiorari* is **DENIED**. The Decision dated August 7, 2017 and the Resolution dated February 12, 2018 of the Court of Appeals in CA-G.R. CR No. 38800 are hereby **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

Please see Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice