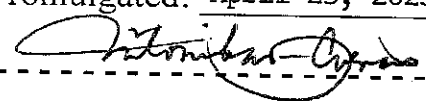


EN BANC

G.R. No. 256700 (*People of the Philippines, petitioner vs. Jomerito S. Soliman, respondent*).

Promulgated: April 25, 2023

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CONCURRING OPINION

GESMUNDO, C.J.:

I concur with the well-written *ponencia* as it clarifies and provides guidelines on the proper computation of the penalty of fine for Online Libel. Moreover, the *ponencia* correctly affirms the Court of Appeals' (CA) ruling that the trial court did not commit grave abuse of discretion when it imposed against respondent Jomerito S. Soliman (*Soliman*) the penalty of fine only for committing the crime of Online Libel.

I write this Concurring Opinion to support the view that when there is grave abuse of discretion, a petition for *certiorari* under Rule 65 of the Rules of Court is the proper remedy for the prosecution to assail an erroneous penalty in a final judgment of conviction. Contrary to Soliman's submission, such remedy does not violate his right against double jeopardy. Moreover, I briefly look into the rationale behind the imposition of fine in libel cases under Administrative Circular (AC) No. 08-2008, or the "*Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*."

The essential facts are as follows:

Soliman was found guilty beyond reasonable doubt of Online Libel under Section 4 of Republic Act (R.A.) No. 10175, or the *Cybercrime Prevention Act*, and was sentenced to pay a fine of ₱50,000.00. In imposing the penalty of **fine only**, the Regional Trial Court (RTC) invoked A.C. No. 08-2008, which permits the imposition of fine rather than imprisonment in libel cases.



Soliman no longer appealed, and proceeded to pay the fine imposed. Meanwhile, the Office of Solicitor General (*OSG*) filed a **petition for certiorari** with the CA, ascribing grave abuse of discretion on the part of the RTC when it imposed a penalty of fine only.

The *OSG* contended that based on R.A. No. 10175, the penalty for Online Libel should be “one (1) degree higher than that provided for” in the Revised Penal Code (*RPC*). Accordingly, the penalty imposed should be *prision correccional* in its maximum period to *prision mayor* in its minimum period instead of a fine only. Soliman countered that the *OSG*’s petition for *certiorari* violates his right against double jeopardy, that a *certiorari* action is an improper remedy to question a final judgment, and that the RTC did not commit grave abuse of discretion because it has the discretion to impose either imprisonment or fine as the penalty.

The CA denied the petition, finding no grave abuse of discretion on the part of the RTC. It held that if the penalty imposed is erroneous, such error is only one of judgment, not of jurisdiction, and therefore not the proper subject of *certiorari*. Finally, the CA ruled that the *certiorari* petition impinged on Soliman’s right against double jeopardy. The *OSG* moved for reconsideration, which was denied by the CA. Hence, the *OSG* filed the present petition.

The issue before the Court is whether the CA correctly ruled that the RTC did not gravely abuse its discretion when it imposed the penalty of fine only.

The *ponencia* **denies the petition and affirms the October 30, 2020 Decision and the May 31, 2021 Resolution of the CA in CA-G.R. SP No. 162948**. It holds that a Rule 65 petition is the proper remedy to assail an erroneously imposed penalty which amounted to grave abuse of discretion. Moreover, it declares that such remedy would not place the accused in double jeopardy.

I concur, but deem it necessary to expound on the narrow instance where the extraordinary writ of *certiorari* can be used to correct an erroneous penalty to assail a final judgment of conviction. To stress, not all erroneous penalties can be remedied *via* a petition for *certiorari* as will be discussed below.

*Double jeopardy; Final
judgment of conviction*

One of the pillars of our criminal justice system is the double jeopardy rule.¹ The right against double jeopardy is guaranteed under the 1987 Constitution, *viz.*:

SECTION 21. No 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 rule dictates that when a person is charged with an offense and the case is terminated — either by acquittal or conviction or in any other manner without the consent of the accused — the accused cannot again be charged with the same or an identical offense.² Case law states that the double jeopardy rule has several avowed purposes,³ *viz.*:

x x x Primarily, it 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. It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it **prevents the State, following conviction, from retrying** the defendant again in the hope of **securing a greater penalty.**⁴ (Emphases supplied)

Notably, such rule prohibits the State from assailing a final and executory judgment in order to either reverse the acquittal or, if convicted, to increase the penalty imposed.⁵

A judgment of acquittal “becomes final immediately after promulgation,” and thus, it cannot be “recalled thereafter for correction or amendment.”⁶ The rationale for such rule has been explained thus:

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

² *Id.*

³ *People v. Dela Torre*, 430 Phil. 420 (2002).

⁴ *Id.* at 430.

⁵ See *Villareal v. People*, *supra*, at 556 and *People v. Dela Torre*, *supra*, at 430. For reversal of acquittal, see *Kepner v. United States*, 11 Phil. 669, 701-702 (1904).

⁶ See *People v. Alejandro*, 823 Phil. 684, 694 (2018), citing *Villareal v. Aliga*, 724 Phil. 47, 62 (2014) stating that “a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation;” *Cea v. Cinco*, 96 Phil. 131, 137 (1954), citing Chief Justice Moran’s Comments on the Rules of Court, 1952 ed., Vol. 2, page. 867.

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 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.⁷

As regards judgments of conviction, it had been resolved in a litany of cases that the rule on double jeopardy “applies when the State seeks the imposition of a higher penalty against the accused”⁸ in final and

⁷ *People v. Arcega*, G.R. No. 237489, August 27, 2020, citing *People v. Velasco*, 394 Phil. 517, 555-557 (2000).

⁸ *Villareal v. People*, supra, at 559-560, citing *De Vera v. De Vera*, 602 Phil. 877, 885 (2009); *People v. Dela Torre*, supra, at 430-431; *People v. Leones*, 418 Phil. 804, 806 (2001); *People v. Ruiz*, 171 Phil. 400, 403 (1978); *People v. Pomeroy*, 97 Phil. 927, 938-940 (1955), citing *People v. Ang Cho Kio*, 95 Phil. 475 (1954).

executory judgments. A judgment of conviction becomes final when: (a) the period for perfecting an appeal has lapsed; (b) the sentence has been partially or totally satisfied or served; (c) the accused has waived in writing his right to appeal; and (d) the accused has applied for probation.⁹

Hence, in several cases, the Court declined to modify the penalty after the judgment of conviction had become final.

In *People v. Leones*,¹⁰ it was pronounced that “where the accused after conviction by the trial court did not appeal his conviction, an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy.”

In *Tan v. People*,¹¹ accused Tan was convicted for Bigamy. He later applied for probation, which rendered the judgment final and executory. Thereafter, the prosecution filed a motion for the modification of penalty, arguing that the penalty imposed on the accused was less than that provided in the penal code. The RTC amended the judgment to correct the imposed penalty. Aggrieved, Tan filed an appeal to question the amended judgment, but the CA denied it. When the case reached the Court, it reinstated the RTC’s original judgment. The Court held that the RTC’s modification of the judgment after it became final clearly impinged on the accused’s basic right against double jeopardy, viz.:

When the trial court increased the penalty on petitioner for his crime of bigamy after it had already pronounced judgment and on which basis he then, in fact, applied for probation, the previous verdict could only be deemed to have lapsed into finality.¹²

The Court added that the filing of the application for probation is “deemed a waiver of the right to appeal,” which causes the judgment to become final.¹³ For this reason, the prosecution could no longer seek a modification of the penalty.

⁹ See *Teodoro v. Court of Appeals*, 328 Phil. 116, 122 (1996); see Section 7, Rule 120 of the Rules of Court.

¹⁰ *Supra*.

¹¹ 430 Phil. 685 (2002).

¹² *Id.* at 694.

¹³ *Id.* at 695.

In *Estarija v. People*,¹⁴ the judgment of conviction had attained finality after the period for perfecting an appeal had lapsed. In said case, the RTC erroneously imposed a straight penalty of 7 years, instead of an indeterminate penalty, against the accused who was convicted of violation of Section 3(b) of R.A. No. 3019. On appeal, the CA affirmed the conviction but modified the penalty to an indeterminate penalty of six (6) years and one (1) month to nine (9) years of imprisonment. The case was elevated to this Court *via* an appeal by *certiorari* under Rule 45. On the procedural aspect, the Court held that the accused erroneously filed an appeal with the CA considering that appellate jurisdiction over the case was with the Sandiganbayan. In light of the failure to perfect the appeal before the Sandiganbayan, the judgment of conviction by the RTC became final and executory. Thus, it could no longer be modified. Anent the proper penalty, while the Court agreed with the CA's pronouncement on the correct penalty, it concluded that the penalty imposed by the RTC could no longer be modified "**since the decision of the RTC has long become final and executory.**"¹⁵

In *Tamayo v. People*¹⁶ (*Tamayo*), the Court emphasized that a judgment of conviction may be modified or set aside only when it is not yet final, elucidating thus:

Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered[,] or modified in any respect except to correct clerical errors or to make *nunc pro tunc* entries. Nothing further can be done to a final judgment except to execute it. No court, not even this Court, has the power to revive, review, or modify a judgment which has become final and executory. This rule is grounded on the fundamental principle of public policy and sound practice that the judgment of the court must become final at some definite date fixed by law. It is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.¹⁷

Also in *Tamayo*, the Court noted that the RTC imposed against therein petitioner a minimum term inaccurate by one day, but quickly added the following observation:

¹⁴ 619 Phil. 457 (2009).

¹⁵ Id. at 463-464.

¹⁶ 582 Phil. 306 (2008).

¹⁷ Id. at 319-320.

Be that as it may, we can no longer correct the foregoing penalty, even if it is erroneous, because, as earlier ruled, the judgment of conviction has become final and executory. We have held that the subsequent discovery of an erroneous penalty will not justify correction of the judgment after it has become final.¹⁸ (Underscoring supplied)

In *De Vera v. De Vera*¹⁹ (*De Vera*), the trial court convicted the accused for Bigamy. In imposing the penalty, the court appreciated the mitigating circumstance of voluntary surrender. The accused applied for and was granted probation. Later, the private complainant questioned the non-mitigation of penalty. When the case reached the Court, it was held that private complainant's prayer to increase the penalty imposed against the accused was not tenable because of the constitutional proscription against double jeopardy. It stated thus:

In filing her motion for reconsideration before the RTC and her petition for *certiorari* before the CA, petitioner sought the modification of the court's judgment of conviction against Geren, because of the allegedly mistaken application of the mitigating circumstance of "voluntary surrender". **The eventual relief prayed for is the increase in the penalty imposed on Geren. Is this action of petitioner procedurally tenable?**

X X X X

Records show that after the promulgation of the judgment convicting Geren of bigamy, it was petitioner (as private complainant) who moved for the reconsideration of the RTC decision. This was **timely opposed by Geren, invoking his right against double jeopardy.**

X X X X

In [*People v. Court of Appeals*], the trial court convicted the accused of homicide. The accused thereafter appealed his conviction to the CA which affirmed the judgment of the trial court but increased the award of civil indemnity. The [OSG], on behalf of the prosecution, then filed before this Court a petition for *certiorari* under Rule 65, alleging grave abuse of discretion. The OSG prayed that the appellate court's judgment be modified by convicting the accused of homicide without appreciating in his favor any mitigating circumstance. **In effect, the OSG wanted a higher penalty to be imposed.** The Court declared that **the petition constituted a violation of the accused's right against double jeopardy; hence, dismissible. Certainly, we are not inclined to rule differently.**²⁰ (Emphases supplied)

¹⁸ Id. at 327.

¹⁹ Supra note 8.

²⁰ Id. at 883-885.

A similar pronouncement was made recently in *People v. Begino*²¹ where the Court observed that the trial court erred in computing the penalty imposed in three estafa cases in the sense that the indeterminate penalty imposed “went beyond” the penalty prescribed. Notwithstanding this error, the Court held that such penalties “**can no longer be corrected, even if erroneous, because the judgment of conviction has become final and executory** after [the accused] chose not to appeal these cases.” It emphasized that “[a]n erroneous judgment, as thus understood, is a valid judgment.”²²

In the above cases, the Court had consistently held that a final judgment of conviction can no longer be modified even when the penalty imposed is inaccurate. Based on the foregoing pronouncements, the general rule is thus clear – that in final and executory judgments of conviction, the prosecution cannot move for the increase of the penalty imposed, lest the accused’s right against double jeopardy will be violated.²³ As will be discussed below, narrow exceptions to this rule have been created in jurisprudence.

Meanwhile, it bears noting that in the present case, the conviction of Soliman became final and executory when he opted not to file an appeal and totally satisfied the sentence by paying the fine. Thus, following the general rule, the prosecution can no longer move to increase the penalty imposed.

Limited exceptions against a final and executory judgment; grave abuse of discretion as an exception

The prohibition against double jeopardy, however, is not absolute. Case law provides the following recognized and narrow exceptions:

The state may challenge the lower court’s acquittal of the accused or **the imposition of a lower penalty** on the latter in the following recognized exceptions: (1) where the prosecution is deprived of a fair opportunity to prosecute and prove its case, tantamount to a deprivation of due process; (2) where there is a finding of mistrial; or (3) **where there has been a grave abuse of discretion.**²⁴ (Emphases supplied)

²¹ G.R. No. 251150, March 16, 2022.

²² Id.

²³ See *De Vera v. De Vera*, supra, at 885.

²⁴ *Villareal v. People*, supra note 1, at 557-558.

Noticeably, the exceptions contemplate even **final and executory** judgments in criminal cases as shown by the inclusion of acquittals.²⁵ Moreover, in *Villareal v. People*²⁶ (*Villareal*), it was ruled that, if there indeed exists grave abuse of discretion on the part of the court or tribunal, the finality of judgment does not have the effect of hindering a challenge *via* a Rule 65 petition, to wit:

[W]e find no irregularity in the partial annulment of the CA Decision in CA-G.R. No. 15520 **in spite of its finality**, as the judgment therein was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.²⁷ (Emphasis supplied)

Where there is an allegation of grave abuse of discretion, case law instructs that the proper remedy is to file a petition for *certiorari* under Rule 65.²⁸ The party asking for the review must show that the power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility and that the exercise of such power “must be so patent and gross as to **amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by law or to act at all in contemplation of law.**”²⁹ When grave abuse of discretion is found to be present, “the accused cannot be considered to be at risk of double jeopardy.”³⁰

Hence, for the prosecution to properly assail a conviction with an erroneous penalty, it is not sufficient to show that the court committed an error in imposing the penalty. Grave abuse of discretion must have attended its imposition. Indeed, only in the very limited exception of showing grave abuse of discretion amounting to lack or excess of jurisdiction can a final and executory judgment in a criminal case be challenged.

In *People v. Veneracion*,³¹ the Court found grave abuse of discretion on the part of the trial court when it rendered its decision. In that case, the Court held that the trial judge acted with grave abuse of discretion when he refused to impose the then statutorily mandated death penalty for the crime of rape with homicide based on his “religious convictions.” The Court explained that “a court of law is no place for a protracted debate on the morality or propriety

²⁵ See *Villa Gomez v. People*, G.R. No. 216824, November 10, 2020, citing *People v. Alejandro*, 823 Phil. 684, 692 (2018), where the Court *en banc* held that “a judgment of acquittal (or order of dismissal amounting to acquittal) may only be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court.”

²⁶ 749 Phil. 16 (2014) [Resolution].

²⁷ *Id.* at 43.

²⁸ See *Villareal v. People*, *supra*, at 558; see also *De Vera v. De Vera*, *supra*.

²⁹ *People v. Celorio*, G.R. No. 226335, June 23, 2021; see also *Villareal v. People*, *supra*.

³⁰ *Villareal v. People*, *id.*

³¹ *People v. Veneracion*, 319 Phil. 364 (1995).

of the sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances.”³² Considering that the erroneous penalty was imposed based on grave abuse of discretion, the case was remanded to the trial court for the imposition of the death penalty.

In *People v. Celorio*³³ (*Celorio*), the Court declared that there is grave abuse of discretion when a trial court imposes a sentence based on a completely non-existent or repealed legal provision. This constituted such grave abuse of discretion that it amounts to the lack or excess of jurisdiction on the part of the trial court. In *Celorio*, the trial court found the accused guilty of violating a penal provision in the Social Security Law; however, it imposed a penalty of only one (1) year imprisonment based on the old law that was already inexistent at the time of the commission of the crime. The then prevailing statute clearly provides that the impossible penalty should be substantially higher, *i.e.*, not less than six (6) years and one (1) day nor more than twelve (12) years. The Court explained thus:

Imposing a **legally baseless sentence** is not only a serious deviation of a judge’s duty under the Rules of Court, but a clear violation of the separation of powers, a doctrine that is of utmost importance in a democratic republic such as ours. In line with such a doctrine, **judges cannot arrogate upon themselves the role of lawmakers. They are prohibited from legislating and imposing penalties out of thin air.** In the words of the Chief Justice, it “basically betrays sovereign will and deviates from the intention of [the] People’s representatives elected to primarily determine policies of governance.” It is an arbitrary act based on the judge’s “will alone and not upon any course of reasoning and exercise of [lawful] judgment.” It is precisely this kind of error that the RTC committed in imposing a sentence that no longer exists under R.A. No. 1161, which had already been amended by R.A. No. 8282.³⁴ (Emphases supplied; citations omitted)

Verily, the trial court committed grave abuse of discretion in *Celorio*, not merely because of the wrong computation of penalty, but also because the trial court relied on a repealed law, which is completely baseless. Hence, the Court stated that a judgment which imposes a sentence based on a non-existent or repealed law, “is a void judgment that created no rights and imposed no duties.” As a result, “all acts performed pursuant to it and claims emanating from it have no legal effect.”³⁵ Hence, even though *Celorio* applied for probation, the same would not produce any legal effect because a void judgment can never become final and executory. The Court pronounced that

³² Id. at 373.

³³ Supra.

³⁴ Id.

³⁵ Id.

“a modification of an invalid sentence or penalty” based on a non-existent law “does not amount to double jeopardy.”³⁶

To emphasize, the general rule remains that the prosecution cannot ask for an increase of the penalty imposed in a final and executory judgment without violating the right of the accused against double jeopardy. The only exception is when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court that rendered the judgment.

Application to this case

Guided by the foregoing pronouncements, it is evident in the present case that **a petition for certiorari is the proper remedy** for the prosecution to assail the RTC’s imposition of fine only, on the alleged ground of grave abuse of discretion in not imposing a higher penalty. However, the OSG eventually failed to prove grave abuse of discretion on the part of the trial court.

To reiterate the general rule, in judgments of conviction which are final and executory, the prosecution can no longer pray for the increase of the penalty imposed by the trial court, for to do so would violate the accused’s right against double jeopardy. An exception to this rule is when there is grave abuse of discretion in the imposition of the penalty, such as when the penalty is completely baseless. Jurisprudence is clear that the proper remedy in such instance is to file a petition for *certiorari* under Rule 65.³⁷ Besides, an appeal is not an available remedy in the present case considering that the judgment had attained finality. To recall, Soliman no longer assailed the judgment against him and fully satisfied the sentence by paying the fine. Hence, in this case, the prosecution correctly filed a petition for *certiorari* to assail the penalty meted out in the judgment of conviction on the ground of grave abuse of discretion.

³⁶ Id.

³⁷ See *Villareal v. People*, supra note 1, at 558-560; see also *De Vera v. De Vera*, supra note 8, at 885-886. Appeal is not the proper remedy as held in these cases: (a) *People v. Dela Torre*, supra note 3, at 422, which stated that “[t]he prosecution **cannot appeal** a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction”; and (b) *People v. Leones*, supra note 8, at 806-807, stating that “even assuming that the penalties imposed by the trial court were erroneous, these **cannot be corrected on appeal** by the prosecution because these are merely errors of judgment and not of jurisdiction.” (Emphases supplied)

However, even though *certiorari* is the proper procedural vehicle to assail grave abuse of discretion, it is still incumbent upon petitioner to clearly demonstrate that the trial court committed grave abuse of discretion wherein it blatantly abused its authority.³⁸ Mere allegation of grave abuse is insufficient. The trial court must be shown to have committed not merely reversible errors, but errors of jurisdiction. The difference between errors of judgment and errors of jurisdiction has been explained thus:

An **error of judgment** is one in which the court may commit in the exercise of its jurisdiction, and which error is reviewable only by an appeal, **while an error of jurisdiction** is one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction, and which error is correctable only by the extraordinary writ of *certiorari*.³⁹

In this case, the *ponencia* found that there was no error of jurisdiction, and therefore, *certiorari* petition cannot prosper.

The *ponencia* declared that, contrary to the prosecution's arguments, the fine imposed on Soliman was within the range of penalty prescribed for Online Libel. After masterfully weaving the pertinent statutory provisions of the Revised Penal Code (RPC),⁴⁰ the Cybercrime Prevention Act or R.A. No. 10175,⁴¹ and R.A. No. 10951,⁴² the *ponencia* found that the range of the penalty of fine for Online Libel shall be "from ₱40,000.00 to ₱1,500,000.00." The trial court judge, therefore, has the discretion to impose any amount within this range. Thus, in the present case, the RTC could not be considered to have abused its discretion when it imposed a fine of ₱50,000.00, which is within the abovementioned range.

Evidently, even though the prosecution availed of the correct procedural vehicle, it failed to substantiate its claim of grave abuse of

³⁸ See *People v. Dela Torre*, supra, at 431, citing *People v. Court of Appeals and Maquilang*, 368 Phil. 169, 185 (1999).

³⁹ *People v. Celorio*, supra note 29, citing *Toh v. Court of Appeals*, 398 Phil. 793, 801-802 (2000).

⁴⁰ Articles 26 and 75 of the Revised Penal Code (RPC) as well as Article 355 of the RPC as amended by Section 91 of Republic Act No. (RA) 10951.

⁴¹ Sections 4(c)(4) and 6 of RA 10175 or the *Cybercrime Prevention Act of 2012*, approved on September 12, 2012, which provide that the penalty for Online Libel is "one degree higher than that provided for by the [RPC]."

⁴² Section 91 of Republic Act No. (RA) 10951 or *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code*, approved on August 29, 2017.

discretion. Hence, the prosecution's prayer to increase the penalty cannot be granted without violating Soliman's right against double jeopardy.

Having discussed the double jeopardy concept as applied to this case, I proceed to support the *ponencia's* discussion on A.C. No. 08-2008.

*Administrative Circular No.
08-2008 (A.C. No. 08-2008)*

In the present case, the prosecution takes issue with the RTC's imposition of fine only pursuant to A.C. No. 08-2008. It contends that the RTC gravely abused its discretion when it did not impose against Soliman the penalty of imprisonment despite R.A. No. 10175 requiring that the penalty shall be one degree higher than that provided in the RPC.⁴³ As phrased in the *ponencia*, the prosecution argues that A.C. No. 08-2008 cannot be applied to Online Libel because R.A. No. 10175 was enacted later and thus, its prescribed penalty prevails over that stated in the Circular.

I concur with the *ponencia* that the argument is not meritorious.

For reference, the RPC provides that the penalty for traditional Libel under Article 355 thereof is "*prision correccional* in its minimum and medium periods *or* a fine ranging from 200 to 6,000 pesos." Noticeably, with the use of the word "or," the penal law explicitly gives the discretion to the court on whether to impose fine as an alternative to imprisonment. The directive under R.A. No. 10175 to impose a penalty "one degree higher" does not remove the discretion of courts to impose fines as an alternative to imprisonment. The *ponencia* thoroughly discusses and computes how "one degree higher" is applied to the penalty of fine.⁴⁴ Hence, the "one degree higher" standard in R.A. No. 10175 cannot be interpreted to mean, as the prosecution suggests, that imprisonment is the only viable penalty for Online Libel infractions.

To reiterate, A.C. No. 08-2008 provides the guidelines expressing a preference for imposing fine over imprisonment for those convicted of libel. The circular reads thus:

⁴³ See *Ponencia*, p. 4.

⁴⁴ *Id.* at 9-10.

SUBJECT: GUIDELINES IN THE OBSERVANCE OF A RULE OF PREFERENCE IN THE IMPOSITION OF PENALTIES IN LIBEL CASES.

Article 355 of the Revised Penal Code penalizes libel, committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, with *prision correctional* in its minimum and medium periods *or* fine ranging from 200 to 6,000 pesos, *or both*, in addition to the civil action which may be brought by the offended party.

In the following cases, the Court opted to impose only a fine on the person convicted of the crime of libel:

x x x x


The foregoing cases indicate an **emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases** under the circumstances therein specified.

All courts and judges concerned should henceforth take note of the foregoing **rule of preference** set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative **Circular does not remove imprisonment as an alternative penalty** for the crime libel under Article 355 of the Revised Penal Code;
2. The Judges concerned may, in the **exercise of sound discretion**, and taking into consideration the peculiar circumstances of each case, **determine whether the imposition of a fine alone would best serve the interests of justice** or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice;
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provision on subsidiary imprisonment. (Emphases supplied)

As expressed in *Punongbayan-Visitacion v. People*,⁴⁵ “judicial policy states a fine alone is generally acceptable as a penalty for libel. Nevertheless,

⁴⁵ 823 Phil. 212, 224 (2018).



the courts may [still] impose imprisonment as a penalty” if it is proper under the circumstances.

In *Fermin v. People*,⁴⁶ although the Court acquitted the petitioner, it proceeded to explain that the imposition of fine in libel cases consonant with A.C. No. 08-2008 is justified in view of the “relatively wide latitude given to utterances against public figures” such as the private complainants in that case.

In *Tulfo v. People*,⁴⁷ the Court discussed the import of A.C. No. 08-2008 and promoted the use of civil actions against defamation, *viz.*:

In libel, the kinds of speech actually deterred are more valuable than the State interest the law against libel protects. The libel cases that have reached this Court in recent years generally involve notable personalities for parties, highlighting a propensity for the powerful and influential to use the advantages of criminal libel to silence their critics.

In any event, alternative legal remedies exist to address unwarranted attacks on a private person’s reputation and credibility, such as the Civil Code chapter on Human Relations. Civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech, and avoid the unnecessary chilling effect on criticisms toward public officials. The proper economic burden on complainants of civil actions also reduces the possibility of using libel as a tool to harass or silence critics and dissenters.⁴⁸

In sum, the rule of preference for imposing fines instead of imprisonment is a judicial policy that is consistent with the penal statutes. The rule of preference expressed in A.C. No. 08-2008 simply reflects the discretion exercised by the Court in penalizing those found liable for committing libel.

All told, considering that Soliman no longer filed an appeal and had in fact paid the fine, the judgment against him has attained finality. As a rule, the prosecution can no longer move to increase the imposed penalty even if it be erroneous, unless the trial court committed grave abuse of discretion. It must be stressed that a petition for *certiorari* is the proper vehicle for the prosecution to assail an erroneous penalty in a final judgment of conviction on the ground of grave abuse of discretion, but the prosecution must still prove

⁴⁶ 573 Phil. 278, 300 (2008).

⁴⁷ G.R. Nos. 187113 & 187230, January 11, 2021.

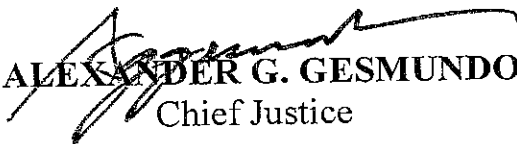
⁴⁸ *Id.*

that grave abuse of discretion is indeed present. Reversing or modifying a judgment of conviction based on a finding of grave abuse of discretion, would not violate the right of the accused against double jeopardy.

On the merits, I concur with the *ponencia's* ruling that the trial court did not commit grave abuse of discretion in imposing against Soliman the penalty of fine of ₱50,000 for Online Libel.

As regards the imposition of fine only, I likewise concur that such rule of preference under A.C. No. 08-2008 is consistent with the statutory provision indicating the alternative penalties that the court may choose to impose in libel cases.

WHEREFORE, I vote to **DENY** the petition.


ALEXANDER G. GESMUNDO
Chief Justice