

SMALL MEDIUM AND ENTERPRISES BANK NOW KNOWN AS GM BANK, PETITIONER, VS. THE PRESIDING JUDGE OF BRANCH 31, RTC OF GUIMBA, NUEVA ECIJA AND SIMEON C. ESPIRITU, RESPONDENTS.

Ponente: GAERLAN, S.H., J.

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GAERLAN, S.H., J.:

For consideration of this Court is a Petition for Certiorari[1] pursuant to Rule 65 of the Rules of Court praying for the nullification of the 22 October 2012 Order[2] promulgated by the Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 31 presided by herein respondent Judge Brigando P. Salvador. In the challenged Order, Criminal Case No. 2288-G for Estafa thru Falsification of Commercial Documents was dismissed in favor of the private respondent Simeon C. Espiritu for failure of the prosecution to prove his guilt beyond reasonable doubt.

The factual milieu[3] of the case as summarized by the RTC is as follows:

“Accused Simeon Espirit, General Manager, and Romulo Capindig, per resolution of the board of Licab Rural Bank, acquired a loan of P250,000.00 from Metro Bank, Cabanatuan City (Metro Bank). The signatories of the promissory Note of the Rural Bank of Licab in favor of Metro Bank, per board resolution of the rural bank were Romulo Capindig, manager, and Simeon Espiritu, Asst. Manager and Corporate Secretary. The Lot and Office building of the bank was used as collaterals to secure the loan. On September 28, 1999, the net proceeds of the loan of Php246,798.33 was deposited to the savings account of the bank with Metro Bank. The next day, September 29, 1999, accused Simeon Espiritu and another authorized person withdrew Php350,000.00 from the corporate account of SME, Bank, and Simeon Espiritu deposited a portion of Php246,700.00 to a personal Time Deposit Account in his name and the remaining portion of Php103,300.00 to a personal Savings Deposit Account, also in his name with SME Licab Branch (formerly Licab Rural Bank, Inc.). Metro Bank Statement of Account (Exh. “D”) was made as a basis for the withdrawal of P350,000.00. Fortunata Estabillo wrote the deposit slip of accused Simeon Espiritu for crediting and posting to the savings account Simeon Espiritu. She concluded that the same amount withdrawn from Metro Bank was used to cover the savings and time deposit of Simeon Espiritu. On October 7, 1999, Simeon Espiritu withdrew the amount of Php100,000.00 from his savings account and re-deposited it to a new Time Deposit Account in his name. Upon maturity on January 26, 2001, he terminated his Time Deposit Account of Php100,000.00 and re-deposited it to Time Deposit Account in the name of Eufemia Rosete. The Time Deposit Account of Php246,700.00 was pre-determined by accused Simeon Espiritu and the amount was re-deposited on January 26, 2001 to three (3) time deposit accounts, namely, Certificate of Time Deposit No. 138 for Php100,000.00 in the name of Liberato Mangoba, Certificate of Time Deposit No. 0137 for Php46,700.00 in the name of Barbara Ann Vega and Certificate of Time Deposit No. 0135 for Php100,000.00 in the name of Oscar Garcia, Jr. At the time of the filing of the complaint on November 2004, the said three (3) Certificates of Time Deposit were still outstanding. SME Bank did not cancel the Certificates of Time Deposit because it would be against Bangko Sentral regulations.

The bank's mortgage loan of Php250,000.00 obtained by SME Bank and the loan proceeds were never recorded in the books of accounts of the bank nor reported in the financial statements of the rural bank.

After the prosecution had rested its case, the accused, through counsel, filed a demurrer to evidence with leave of court and said leave was granted by the Court. The accused anchors his demurrer to evidence on the

following grounds: a) Not all the elements of Estafa under Art. 315 par. 1 (b) was duly established and b) The prosecution's evidence were inadmissible for being hearsay. ”

Thereafter, the assailed Order[4] was rendered by the trial court granting the Demurrer to Evidence. The dispositive portion of which reads:

“WHEREFORE, premises considered, this case is hereby dismissed for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

SO ORDERED.”

Feeling aggrieved with the Order, petitioner is now before this Court laying a lone ground for the allowance of its petition:

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED CRIMINAL CASE NO. 2288-G.

THIS COURT’S RULING

A petition for certiorari under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office 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.[5] It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[6]

This Court now resolves this petition applying the earlier-mentioned jurisprudence.

First requisite. Petitioner correctly impleaded the trial court judge in his certiorari petition.[7]

Second requisite. It is well-settled that a petition for certiorari against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested.[8] The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.[9] Mere abuse of discretion is not enough; it must be grave.[10] The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[11]

In the present case, the petitioner averred that the public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when: 1) it ignored the fact that all the elements of the complex crime of Estafa thru Falsification of a Commercial Document were duly established by the prosecution[12]; 2) it found that the Information in Criminal Case No. 2288-G did not allege that Simeon Espiritu used false pretenses in committing the complex crime of Estafa thru Falsification of a Commercial Document[13]; and 3) it found that Simeon Espiritu did not falsely pretend or misrepresent to Metro Bank that he possesses power, property or credit in applying for a loan.[14]

This Court is not convinced.

After the prosecution rested its case, and the accused Simeon Espiritu filed a Demurrer to Evidence[15], the trial court in order to determine whether the evidence presented by the prosecution is sufficient to warrant the conviction of the accused beyond reasonable doubt, it evaluated the prosecution's evidence of its accusations

against the petitioner. [16] Resultantly, the trial court found and ruled that the prosecution's evidence is not sufficient, thus, it granted the petitioner's Demurrer to Evidence.

The petitioner not being convinced with the ruling of the trial court, it filed the instant petition.

After a review of the questioned Order, the petition and its attachments, as well as the Comment[17] filed by Simeon Espiritu and the subsequent Reply[18] of the petitioner, this Court begs to disagree with the arguments of the petitioner. We are not convinced that the RTC committed grave abuse of discretion when it granted the Demurrer to Evidence.

The RTC in its Order clearly explained the reasons behind its ruling.

The RTC ruled that the falsification of a public, official or commercial document may be a means of committing estafa and in such case, the falsified document is actually utilized to defraud another.[19] Verily, in the complex crime of estafa thru falsification of a commercial document, as in the case in the RTC, the crime of falsification should have been consummated prior to the commission of the crime of estafa.[20] In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official or commercial document to defraud another is estafa.[21]

Likewise, the RTC explained that these pieces of evidence formally offered by the prosecution were insufficient to prove the crime of falsification of a commercial document. The RTC found that the Certificates of Time Deposits alleged by the prosecution to be the falsified commercial documents were not falsified because they were properly funded and issued by authorized signatories of the bank.[22] In fact, the RTC even stated that these Certificates of Time Deposits were at best, mere evidence of conversion or misappropriation, if it is proven that private respondent Simeon Espiritu was one of those who withdrew the amount of P350,000.00 from the savings account of the petitioner.[23] Unfortunately, however, the prosecution also failed to prove that Simeon Espiritu was one of those who withdrew the same. The RTC further in its discussion stated that the evidence presented in court as proof of withdrawal from the savings account of the petitioner was the bank statement issued by Metrobank which did not show who actually made the withdrawal.[24] Thus, the guilt of Simeon Espiritu as to the crime of falsification of a commercial document cannot be proven beyond reasonable doubt. Consequently, there being no proof of falsification of a commercial document, the accused cannot be convicted of estafa which the prosecution alleged to have been committed thru it.

Remember, in the case of Imelda R. Marcos vs. The Honorable Sandiganbayan the Supreme had the occasion to again give emphasis on the time-honored principle of law that an accused has in his favor the presumption of innocence which the Bill of Rights guarantees.[25] Unless his guilt is shown beyond reasonable doubt, he must be acquitted.[26] This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged.[27] The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal.[28] Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty.[29] Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[30] The conscience must be satisfied that the accused is responsible for the offense charged.[31]

The petitioner also questioned the Order of the RTC by alleging that the same court failed to consider the prosecution's averment that Simeon Espiritu used false pretenses or fraudulent representations to obtain a loan from Metro Bank in the amount of Php250,000.00.

The RTC has aptly explained[32] –

Nowhere in the information, however, could we read the allegation “that the accused falsely represented that the loan was purportedly to be used by the bank as additional working capital, when in truth and in fact, the accused had all the while intended to use the proceeds of the loan for his own personal gain” or statements of similar import.

It is imperative that the Information filed with the trial court be complete – to the end that the accused may suitably prepare his defense. Corollary to this, an indictment must fully state the elements of the specific offense alleged to have been committed as it is the recital of the essentials of a crime which delineate the nature and cause of accusation against the accused.

This Court concurs with the RTC Judge that it is against the Constitutional right of the accused to be informed of the nature and cause of the accusation against him if he considered allegations which were not included in the Information. The Supreme Court time and again ruled that[33] –

Our rulings have long settled the issue on how the acts or omissions constituting the offense should be made in order to meet the standard of sufficiency. Thus, the offense must be designated by its name given by statute or by reference to the section or subsection of the statute punishing it. The information must also state the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense. The presumption is that the accused has no independent knowledge of the facts that constitute the offense. (Emphasis Ours.)

Equally important is the established fact that Simeon Espiritu, then Asst. Manager and Corporate Secretary, together with Romulo Capindig, then General Manager of the petitioner, acquired the Php250,000.00 loan from Metro Bank through a board resolution. The RTC clearly stated in the Order granting the Demurrer to Evidence that Simeon Espiritu and Romulo Capindig did not falsely pretend or misrepresent to the Metro Bank that they possess power, property or credit in applying for a loan.[34] Actually, Simeon Espiritu and Romulo Capindig were presumed clothed with authority to apply for a loan through a board resolution.[35]

This Court is guided by the rule that in considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused – in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.[36] The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense.[37] And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption prevails and the accused should necessarily be acquitted.[38] Hence, the public respondent having only acted according to the same principle did not commit grave abuse of discretion amounting to lack of jurisdiction to be a subject of a petition for certiorari.

Moreover, this Court takes this opportunity to again reiterate the ruling of the Supreme Court in the case of Hon. Judge Jesus B. Mupas vs. People of the Philippines, et al.[39] wherein it was enunciated that -

As a general rule, an order granting the accused's demurrer to evidence amounts to an acquittal. There are

certain exceptions, however, as when the grant thereof would not violate the constitutional proscription on double jeopardy. For instance, this Court ruled that when there is a finding that there was grave abuse of discretion on the part of the trial court in dismissing a criminal case by granting the accused's demurrer to evidence, its judgment is considered void, as this Court ruled in *People v. Laguio, Jr.*[40]:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the special civil action of certiorari under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via certiorari, the right of the accused against double jeopardy is not violated.

The petitioner Small and Medium Enterprises Bank (now GM Bank), in its petition quoted this jurisprudence and this Court is not remiss of the same. Thus, a thorough review of all the pleadings and their annexes was carried out by this Court. During the said review, however, this Court observed the petitioner's failure to implead the People of the Philippines, an indispensable party.

Consequently, this Court cannot dispense of ruling of the Supreme Court in the case of *Lito Bautista and Jimmy Alcantara vs. Sharon Cuneta-Pangilinan*[41] reiterating its decision in the case of *People of the Philippines vs. Arturo F. Duca*[42] where it held that the authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government.

The Supreme Court further expounded these powers and functions of the OSG when it stated in the same of case of *Lito Bautista and Jimmy Alcantara vs. Sharon Cuneta-Pangilinan* that –

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane*, it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. The same determination was also arrived at by the Court in *Metropolitan Bank and Trust Company v. Veridiano II*. In the recent case of *Bangayan, Jr. v. Bangayan*, the Court again upheld this guiding principle. (Emphasis supplied.)

The petition filed by the GM Bank before this Court even cited the ruling of the Supreme Court in the case of *People of the Philippines vs. Honorable Pedro Santiago*[43] and gave emphasis that the private complainant having interest in the civil aspect of the case may file a special civil action challenging the decision on jurisdictional grounds, to wit:

In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action

respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant

This Court recognizes such right of the private complainant to file a petition for certiorari to question the civil aspect of the case. Unfortunately, however, a perusal of the petition discloses that the GM Bank's petition clearly questions not the civil aspect of the case but the criminal aspect of the Order of the RTC. There is nothing within its arguments which raises a question on the civil aspect of the case.

Since the petition filed by the respondent before this Court essentially questioned the criminal aspect of the Order of the RTC, not the civil aspect of the case, it should have been filed by the State through the OSG.[44] Considering that the petition for certiorari filed before this Court was not at the instance of the OSG[45], the same should be dismissed. It bears emphasis that petitioner lacked the personality or legal standing to question the trial court's order because it is only the Office of the Solicitor General (OSG), who can bring actions on behalf of the State in criminal proceedings, before the Supreme Court and this Court.[46] Thus, this Court shall deny this petition.

WHEREFORE, premises considered, the petition is DENIED.

SO ORDERED.

Pizarro, N.B., Chairperson, and [*]Galapate-Laguilles, Z.T., JJ., concur.

[*] Acting Junior Member, per Office Order No. 15-15-ABR, dated January 20, 2015.

[1] Rollo, pp. 3-23.

[2] Rollo, pp. 28-36.

[3] Rollo, pp. 94-96.

[4] Supra, note 1.

[5] Ceferina Lopez Tan vs. Spouses Apolinar P. Antazo and Genoveva O. Antazo, G.R. No. 187208, February 23, 2011.

[6] Ibid.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Rollo, p. 13.

[13] Rollo, p. 16.

[14] Rollo, p. 17.

[15] Rollo, p. 186.

- [16] Supra, note 5.
- [17] Rollo, p. 234.
- [18] Rollo, p. 250.
- [19] Supra, note 2.
- [20] Ibid.
- [21] Id.
- [22] Id.
- [23] Id.
- [24] Id.
- [25] G.R. No. 126995, October 06, 1998 .
- [26] Ibid.
- [27] Id.
- [28] Id.
- [29] Id.
- [30] Id.
- [31] Id.
- [32] Supra, note 2.
- [33] G.R. No. 148965, February 26, 2002.
- [34] Supra, note 2.
- [35] Ibid.
- [36] People vs. Tison, G.R. No. 185715, January 19, 2011.
- [37] Ibid.
- [38] Id.
- [39] G.R. No. 189365, October 12, 2011.
- [40] G.R. No. 128587, March 16, 2007.
- [41] G.R. No. 189754, October 24, 2012.
- [42] G.R. No. 171175, October 09, 2009.
- [43] G.R. No. L-80778 June 20, 1989.
- [44] Supra, note 35.
- [45] Rollo, pp. 259-260.
- [46] Supra, note 35.

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