

**JOSEPH LEE HO UY, PETITIONER, VERSUS HON. ROLANDO G. HOW
(IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT OF PARAÑAQUE CITY, BRANCH 257), DEL-SOR ENTERPRISES
AND ...**

CA-G.R. SP NO. 104101, June 08, 2010

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Court of Appeals

Assailed in the instant petition filed under Rule 65 of the 1997 Rules of Civil Procedure are the following:

a)

The Decision (Rollo, pp. 51-61) dated November 23, 2007 of the Regional Trial Court of Parañaque City, Branch 257 which acquitted private respondent Jericho R. Delansig of the crime of Estafa under Article 315, paragraph 1 (b) of the Revised Penal Code; and

b)

The Order (Rollo, pp. 62-63) dated April 4, 2008 which denied petitioner's motion for reconsideration likewise issued by public respondent in Criminal Case No. 00-1005.

The facts are as follows:

Petitioner Joseph Lee Ho Uy is the President and owner of Springdale Industries which is engaged in the bottling and wholesale of mineral water. Private respondent Jericho Delansig is the owner and General Manager of Del-Sor Enterprises.

On August 5, 1996, Petitioner and private respondent entered into and executed an Exclusive Distributorship Agreement (EDA) for a period of two years. The said agreement expressly authorized private respondent as the exclusive distributor of Springdale Industries mineral water bottled in five-gallon containers in areas of Parañaque and Las Piñas, Metro Manila.

Petitioner provided the water dispensers and five gallon containers for the use of private respondent's customers. The ownership of the dispensers and containers shall remain with the petitioner, however, private respondent is responsible for its safe keeping and maintenance. Under the EDA, upon the termination thereof, private respondent is required to return all the dispensers and containers.

On October 19, 1998, the petitioner terminated the EDA and demanded the return of all the water dispensers and containers in the amount of Eight Million Three Hundred Forty Thousand Three Hundred Sixty Pesos (Php8,340,360.00).

Private respondent failed to return the water dispensers and containers, hence, a Complaint-Affidavit for Estafa was filed by petitioner against private respondent. (Rollo pp. 101-110) As a consequence, private respondent was

charged with Estafa in an Information, the accusatory portion of which reads:

"That during the period July 22, 1996 to October 1999, in Parañaque City, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, received in trust from complainant Springdale Industries herein represented by: Joseph Lee Ho Uy the water dispensers and containers including the contents thereof, (mineral water) in the total amount of P8,642,060.00, but the accused once in possession of said amount, with intent to defraud, with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the same for his own personal use and benefit and despite several demands by said complainant to account, return or remit the proceeds thereof, he failed and refused to do so, to the damage and prejudice of the complainant herein, in the aforementioned amount of P8, 642,060.00.

CONTRARY TO LAW"

On November 23, 2007, public respondent rendered the assailed Decision acquitting private respondent of the crime of estafa but finding him civilly liable, the dispositive portion of which states:

"WHEREFORE, accused Jericho R. Delansig is acquitted of the charge of estafa under Art. 315, paragraph 1(b) of the Revised Penal Code on the ground of reasonable doubt.

However, he is found civilly liable under the Exclusive Distributorship Agreement (Exhibit E) and ordered to pay Joseph Lee Ho Uy/Springdale Industries the sum of P8,340,360.00 representing the total value of the unreturned mineral water containers and dispensers plus interest at 12% per annum computed from October 26, 1998 up to the date the obligation is fully paid and 25% of the amount due for attorney's fees and cost of collection (Sales Invoices, Exhibits T to T-235).

In the execution of this judgment by the sheriff upon its finality a portion of the amount recovered from Jericho Delansig shall constitute a lien to answer for legal fees which Joseph Lee Ho Uy or Springdale Industries is liable under the New Rules of Court and the Circulars of the Supreme Court.

IT IS SO ORDERED." (Rollo p. 61)

On December 18, 2007, private respondent filed a Motion for Partial Reconsideration of the civil aspect of the trial court's Decision, as well as a Motion to Release Cash Bail. On the other hand, petitioner filed the following: a) Motion for Execution Pending Appeal; 2) Opposition to Motion to Release Cash Bail; and 3) Opposition to Motion for Partial Reconsideration.

On April 4, 2008, the RTC issued the assailed Order regarding the pleadings filed by petitioner and private respondent, the dispositive portion of which states:

"WHEREFORE, in summation, private complainant's Motion for Execution Pending Appeal is denied. The Motion for Partial Reconsideration of the accused is, likewise, denied. However, the accused Motion to Release Cash Bail is granted.

The Office of the Clerk of Court, Regional Trial Court, Parañaque City is ordered to release the cash bail posted by the accused upon the latter's full compliance with the documentary requirements of the said office." (Rollo p. 63)

Hence, this petition with the following assignment of errors.

I.

Public Respondent gravely abused its discretion amounting to lack of jurisdiction when it merely opted to review the civil aspect of its Decision dated 23 November 2007 and totally ignored the criminal aspect thereof despite Private Respondent's filing of a motion for reconsideration of the Decision dated 23 November 2007.

II.

Private respondent gravely abused its discretion amounting to lack of jurisdiction when it did not reverse its Decision dated 23 November 2007 acquitting Private Respondent of the crime of Estafa despite the clear and convincing evidence presented during the trial his criminal culpability and the numerous implied admission made by Private Respondent himself of the crime charged.

The Court finds no merit in the petition.

Petitioner contends that the public respondent erred when it did not review the criminal aspect of the case. He argued that the decision of the RTC has not yet attained finality by reason of the Motion of Partial Reconsideration filed by private respondent. Petitioner further claimed that the filing of a partial motion for reconsideration of the civil aspect opened the whole case for review by the trial court, including the acquittal of Jericho Delansig. (Rollo p. 23) Petitioner is also assailing the sufficiency and the correctness of the evaluation of the pieces of evidence submitted by the prosecution. (Rollo p. 25) However, said evaluation is a matter completely addressed to the discretion of the court.

It must be stressed that certiorari is a remedy meant to correct only errors of jurisdiction, not errors of judgment. 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. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court 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 correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. 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. (First Corporation v. Former Sixth Division of the Court of Appeals, 526 SCRA 564, 578 [2007])

The review is on the question of whether there has been a validly rendered decision, not on the question of the decision's error or correctness. Under the exceptional nature of a Rule 65 petition, the burden — a very heavy one — is on the shoulders of the party asking for the review to show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; or of a patent and gross abuse of discretion amounting to an evasion of a positive duty or a virtual refusal to perform a duty imposed by law or to act in contemplation of law; or to an exercise of power in an arbitrary and despotic manner by reason of passion and hostility. (People v. Sandiganbayan, 491 SCRA 185 [2006])

Section 21, Article III of the Constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense". Section 7, Rule 117 of the Rules of Court, which implements this particular constitutional right, reads:

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

in the offense charged in the former complaint or information."

Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent. (*Pacoy v. Cajigal*, 534 SCRA 338 [2007]) All the three requisites exist in the case at bench.

A judgment of acquittal is final and is no longer reviewable. (*People v. Terrado*, 558 SCRA 84 [2008]) It is immediately executory and the State may not seek its review without placing the accused in double jeopardy. (*People v. Sandiganbayan*, 491 SCRA 185 [2006]) The High Court had the occasion to fully explain the reason behind the double jeopardy rule in *People v. Velasco* (340 SCRA 207 [2000])

"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 'apart 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."

In the case at bench, private respondent filed a Motion for Partial Reconsideration of the civil aspect of the case. The criminal aspect of the case particularly respondent's acquittal has become final and executory upon its promulgation on December 4, 2007 by reason of finality-of-acquittal rule. 'Hence, it cannot be the subject of a motion for reconsideration.

The reliance of the petitioner in the case of *People vs. Astudillo* (401 SCRA 723, [2003]) is misplaced because it is not in all fours with this case. In *Astudillo*, the accused was convicted by the Regional Trial Court for murder. The accused may still file a motion for reconsideration or an appeal to reverse his conviction. *Astudillo* is an application of the settled jurisprudence that an appeal from a judgment of conviction throws the case for review. In this case, the accused (private respondent herein) was acquitted. Hence, the judgment in the criminal aspect is beyond the court's review as it becomes immediately final and executory upon its promulgation.

Furthermore, the petition itself states that it was formally filed under Rule 65 of the Rules of Court and seeks to annul, reverse and set aside the decision of the RTC. (Rollo p. 46) Thus, the petition's clear and unequivocal intention to seek a review on the merits of the RTC judgment of acquittal puts it on a direct collision course with the constitutional proscription on double jeopardy. This is more than enough reason to deny the petition.

In this case, the RTC's jurisdiction over the nature of the case is not disputed, nor was its jurisdiction over the private respondent ever brought into question. Neither does the petition substantively and effectively impute any error based on the RTC's grave abuse of discretion in the exercise of its jurisdiction. Thus, we cannot review the verdict of acquittal.

In fine, the denial by the RTC of reviewing and reversing the Decision of the criminal aspect of the case cannot be considered grave abuse of discretion. The term grave abuse of discretion, in its juridical sense, connotes capricious, despotic, oppressive, or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse must be of such degree as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and capricious manner by reason of passion and

hostility. The word capricious, usually used in tandem with the term arbitrary, conveys the notion of willful and unreasoning action. Thus, when seeking the corrective hand of certiorari, a clear showing of caprice and arbitrariness in the exercise of discretion is imperative. (Torres v. Abundo, Sr., 512 SCRA 556, 568-569 [2007]) In this case, Joseph Lee Ho Uy utterly failed to demonstrate caprice or arbitrariness on the part of the RTC in denying the review of the criminal aspect of the case.

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit.

SO ORDERED.

Villamor and Macalino, [*] JJ., concur.

[*] Acting Junior Member per Office Order No. 115-10-ABR dated May 18, 2010.

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