

**JEOFFY GEROBIESE Y ALEMANIA ALIAS “JEFF”;
PETITIONER, VS. HON. EXECUTIVE JUDGE EPHREM SUAREZ
ABANDO OF THE REGIONAL TRIAL COURT, BRANCH 18, HILONGOS,
LEYTE AND THE PEOPLE OF THE...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the Order[2] dated December 2, 2013 of the Regional Trial Court, Eighth (8th) Judicial Region, Branch 18, Hilongos, Leyte, in Criminal Case No. H-1051 for Violation of R.A. 6425, which denied the Application for Probation of the petitioner, as well as the Order[3] dated January 16, 2014 of the same RTC in Criminal Case No. H-1201 for Violation of R.A. 8294 and Criminal Case No. H-1051 for Violation of Section 16, Article III of R.A. 6425, which denied the Joint Omnibus Motion of herein petitioner.

The Antecedents

In gist, the petitioner Jeoffy Gerobiese is the accused in both Criminal Case No. H-1051 for Violation of Sec. 16, Art III of R.A. 6425 and in Criminal Case No. H-1201 for Violation of R.A. 8294.

Criminal Case No. H-1201 for Violation of R.A. 8294

The Municipal Circuit Trial Court, Branch 18, Bato-Matalom, Leyte found[4] the petitioner guilty of violating R.A. 8294 (Illegal or Unlawful Possession of Ammunition for Cal. 38). This finding was also affirmed[5] with modification by the Regional Trial Court, Branch 18, Hilongos, Leyte on August 31, 2005. The dispositive portion of the ruling states, as follows:

"WHEREFORE, the decision on appeal to this Court is AFFIRMED with a modified penalty imprisonment of Six (6) Months and One (1) Day to Four (4) Years and Two (2) Months, all the rest are hereby adopted.

SO ORDERED"[6]

On November 14, 2005, petitioner filed a Motion for Reconsideration.[7] However, the public respondent denied the said motion in an Order[8] dated March 20, 2006. Petitioner argues that such an Order denying his Motion for Reconsideration was never received by him nor his counsel.

Criminal Case No. H-1051 for Violation of Sec. 16, Art III of R.A. 6425

Subsequently, on September 17, 2012, the Regional Trial Court, Branch 18, Hilongos, Leyte rendered a Decision[9] in Criminal Case No. H-1051, this time finding petitioner guilty beyond reasonable doubt for Violation of Section 16, Article III of R.A. 6425, as amended. The decretal portion of the ruling reads:

"WHEREFORE, in view of the foregoing, accused JEFFY GEROBIESE y ALEMANIA @ "Jeff," is hereby found GUILTY beyond reasonable doubt in Violation of Sec. 16, Article III of R.A. 6425, as amended, and hereby sentenced to suffer the imprisonment of Six (6) Months of Arresto Mayor as minimum, to Four (4)

Years and Two (2) Months of Prison Correccional as maximum. Cost against the accused.

SO ORDERED."[10]

On September 20, 2012, petitioner, through counsel, filed an Application for Probation[11] stating among others that the petitioner intends to avail of the benefits granted by the Presidential Decree No. 968, otherwise known as the Probation Law of 1976, as amended.

On February 8, 2013, the Chief Probation and Parole Officer of Baybay City Parole and Probation Office filed a Motion to Deny Petition for Probation Due to Disqualification,[12] alleging that petitioner was previously convicted in Criminal Case No. H-1201 for Violation of R.A. 8294.

On December 2, 2013, an Order[13] was issued by the Regional Trial Court, Branch 18, Hilongos, Leyte which denied the Application for Probation filed by the petitioner. The dispositive portion of the ruling, to wit:

"WHEREFORE, the Application for Probation filed by accused-JEFFY GEROBIESE in the above-captioned criminal case is hereby denied.

Let be issued a Warrant of Arrest of accused-JEFFY GEROBIESE of Brgy. Guerrero, Bato, Leyte, for him to serve the sentenced imposed by the Decision dated September 17, 2012.

SO ORDERED."[14]

Petitioner, through counsel, alleged that he received a copy of such Order on December 12, 2013.

Unsatisfied, petitioner on December 19, 2013 filed a Joint Omnibus Motion[15] dated December 16, 2013, asking for the dismissal of the case docketed as H-1201 and seeking for reconsideration of its Order dated December 2, 2013 which denied the Application for Probation filed by petitioner in the case docketed as H-1051 for Violation of R.A. 6425.

On January 16, 2014, the Regional Trial Court, Branch 18, Hilongos, Leyte issued an Order[16] denying the Joint Omnibus Motion filed by the petitioner. The dipositive portion of the ruling states:

"WHEREFORE, premises considered, the JOINT OMNIBUS MOTION is DENIED. The Order dated December 2, 2013 STAYS.

SO ORDERED."[17]

A copy of such Order was received by the petitioner on February 11, 2014.

Undeterred and aggrieved, petitioner thus comes before Us raising the following issues:

I
THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN FINDING THAT ITS DECISION DATED AUGUST 31, 2005 HAS ATTAINED ITS FINALITY.

II
THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN NOT DISMISSING THE CASE DOCKETED AS CRIM. CASE NO. H-1201 FOR LACK OF JURISDICTION.

III
THE HONORABLE REGIONAL TRIAL COURT GRAVELY ERRED IN DENYING THE APPLICATION FOR PROBATION FILED BY THE PETITIONER.

The Ruling of this Court

The petition is not meritorious.

In retrospect, petitioner alleged that he did not receive the RTC's Order denying his Motion for Reconsideration; hence, the ruling in Criminal Case No. H-1201 for Violation of R.A. 8294 has not yet attained finality. Given this, he is therefore not disqualified from asking for probation in Criminal Case No. H-1051 which is for Violation of Sec. 16, Art III of R.A. 6425, as he has not been previously convicted of any crime.

On the other hand, on the aspect of non-receipt of the challenged Order, the public respondent RTC in its assailed Order[18] argued in this wise:

The assertion of the accused that he was not being duly notified by the Order dated March 20, 2006 is a factual issue which can be determined by perusing the records of Criminal Cases Nos. H-1201 and H-1051.

In criminal case no. H-1051, the record shows that on the hearing of (the) instant Motion to deny application for probation the prosecution submitted a Certification (Exhibit "A") issued by Ricste L. Corpez, Officer-In-Charge, Philippine Postal Corporation, Hilongos, Leyte, dated May 15, 2013, certifying that "one (1) Registered Letter from the Regional Trial Court, Branch 18, Hilongos, Leyte, bearing Registry No. 1590 posted on March 30, 2006, addressed to Atty. Joseph Fulache was received by his wife, Imelda Fulache on March 31, 2006.

Section 9, Rule 13, of the Revised Rules of Court, provides:

"Sec. 9. Service of judgment, final orders, or resolutions-Judgments, final orders or resolutions shall be served either personally or by registered mail. xxx xxxx xxxxx."

The record reveals that the subject Order (denying the motion for reconsideration) was served through registered mail, evidenced by the Certification (Exhibit "A") dated May 15, 2013.

Section 7, Section 9, Rule 13, of the Revised Rules of Court, reads:

"Sec. 7. Service by mail. - Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, xxx xxxx xxxxx xxxxxx."

For this Court, the accused was duly notified and/or was properly served of the subject Order (denying the motion for reconsideration) through his counsel. It is worthy to note that service to the counsel on record is considered service to the party he is (sic) represented.

Indeed, We agree with the lower court that the issue on non-receipt is a factual one, which can be verified through the records of the case. Thus, considering that the lower court had substantial evidence to prove that a copy of the Order was served to the petitioner's counsel, We cannot ascribe grave abuse of discretion on the part of the RTC.

Moreover, (t)he 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. Mere abuse of discretion is not enough; it must be grave. 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.[19] Absent these elements, the invocation of grave abuse will not prosper.

Likewise, We find unpersuasive petitioner's argument that it was only upon the denial of his Application for Probation in Criminal Case No. H-1051 which is for Violation of Sec. 16, Art III of R.A. 6425 that he allegedly came to know the denial of his motion for reconsideration and the finality of the decision in Criminal Case No. H-1201 for Violation of R.A. 8294.

It bears stressing that the motion for reconsideration in Criminal Case H-1201 was filed by the petitioner in 2005, while the denial of the Application for Probation was issued on December 2, 2013. It baffles this Court that from the year 2005 to 2013, the petitioner never bothered to make a follow up as to the status of his motion for reconsideration in Criminal Case No. H-1201 for Violation of R.A. 8294. Such inaction over a considerable length of time militates against the petitioner's claim.

Anent thereto, the denial of the Application for Probation of the petitioner in Criminal Case No. H-1051 which is for Violation of Sec. 16, Art III of R.A. 6425 was only proper as he is already disqualified due to his prior conviction in Criminal Case No. H-1201 for Violation of R.A. 8294. Pertinent portions of the provision of Republic Act No. 968 (Establishing a Probation System, Appropriating Funds therefor and for Other Purposes), to wit:

Section 9. Disqualified Offenders. The benefits of this Decree shall not be extended to those:

- (a) sentenced to serve a maximum term of imprisonment of more than six years;
- (b) convicted of any offense against the security of the State;
- (c) who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than Two Hundred Pesos;
- (d) who have been once on probation under the provisions of this Decree; and
- (e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof. (emphasis supplied)

In addition, this Court also takes this opportunity to emphasize that (p)robation is not a right but a mere privilege, an act of grace and clemency conferred by the State, and may be granted by the court to a deserving defendant. Accordingly, the grant of probation rests solely upon the discretion of the court. It is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused.[20]

Finally, there is no merit to petitioner's contention that Criminal Case No. H-1201 for Violation of R.A. 8294 should be dismissed due to lack of jurisdiction. To recall, petitioner alleged that since he was charged and convicted for another crime, the case against him for Violation of R.A. 8294 should be dismissed pursuant to the last provision of Section 1 of Republic Act No. 8294,[21] which states as follows:

Section 1. Sec. 1 Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

"Sec. 1. Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. – The penalty of prision correccional in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, That no other crime was committed.

"The penalty of prision mayor in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, That no other crime was committed by the person arrested.

"If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm

shall be considered as an aggravating circumstance.

"If the violation of this Sec. is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat.

"The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

"The penalty of arresto mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor." (emphasis supplied)

In view of the above-mentioned law, petitioner posits that the charge of Illegal Possession of Ammunition against him should be dismissed since he was also charged for Illegal Possession of Prohibited Drug.

We find this stance futile.

First and foremost, as earlier observed, it took petitioner eight (8) long years after the filing of his motion for reconsideration to assail the finality of its denial and to allege non-receipt thereof. In the same vein, petitioner's invocation of dismissal[22] came only after seven (7) years have passed since the finality[23] of the ruling. Verily, it is the considered view of this Court that the ruling in Criminal Case No. H-1201 for Violation of R.A. 8294 has already attained finality. Hence, issues pertaining thereto must be laid to rest in accordance with the principle of immutability of judgments.

In *Apo Fruits Corporation v. Court of Appeals*,[24] it has been held that:

The main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judicable controversies with finality.[25] Nothing better serves this role than the long established doctrine of immutability of judgments.

It is never a small matter to maintain that litigation must end and terminate sometime and somewhere, even at the risk of occasional errors.[26] A judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[27] The reason for the rule is that if, on the application of one party, the court could change its judgment to the prejudice of the other, it could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely.[28] The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements.[29]

The doctrine of immutability and inalterability of a final judgment has a two-fold purpose: (1) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business and (2) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Controversies cannot drag on indefinitely. The rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[30] The doctrine is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.

Furthermore, a judicious assessment of the argument raised by the petitioner would show that it involves a question of law or the interpretation thereof, which is beyond the province of a Petition for Certiorari under Rule 65, which pertains only to questions involving jurisdiction.

By analogy, We find guidance in the ruling enunciated in *Century Iron Works, Inc. v. Banas*,^[31] thus:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.^[32]

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.^[33] (emphasis supplied)

Likewise, the tenet laid down in *Spouses Dycoco v. Court of Appeals*^[34] is also worth emphasizing, viz:

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal.^[35]

The failure of petitioner-spouses to file an appeal by certiorari under Rule 45 of the Rules of Court cannot be remedied by the mere expedient of conjuring grave abuse of discretion to avail of a petition for certiorari under Rule 65. In *Balayan v. Acorda*^[36] the Court ruled:

It bears emphasis that the special civil action for certiorari is a limited form of review and is a remedy of last recourse. The Court has often reminded members of the bench and bar that this extraordinary action lies only where there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. It cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, certiorari not being a substitute for a lapsed or lost appeal. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion. x x x. (Citations omitted.)

Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. x x x. (emphasis supplied)

In Criminal Case No. H-1201, appeal was indubitably available; however, the petitioner failed to invoke the same due to negligence. Hence, the ruling of conviction became final and executory, corollary thereto, the Application for Probation of the petitioner in Criminal Case No. H-1051 was appropriately denied.

WHEREFORE, in view of the foregoing, the Petition is DENIED. The Order dated December 2, 2013 of the Regional Trial Court, Branch 18, Hilongos, Leyte, in Criminal Case No. H-1051 for Violation of Section 16, Article III of R.A. 6425, which denied the Application for Probation, as well as the Order dated January 16, 2014 of the same RTC denying the Joint Omnibus Motion of the petitioner are hereby AFFIRMED.

SO ORDERED.

Hernando, Chairperson and Azcarraga-Jacob, JJ., concur.

[*] Indicated as "Jeffy" in the Order dated December 2, 2013 and January 16, 2014, in the Joint Omnibus Motion, Application for Probation, Order dated March 20, 2006.

[1] See Petition for Certiorari (with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary

Injunction), rollo, pp. 3-88.

[2] Rollo, pp. 70-71.

[3] Rollo, p. 87-88.

[4] See MCTC Decision, rollo, pp. 25-39.

[5] See RTC Decision, rollo, pp. 41-43.

[6] Rollo, p. 43.

[7] Rollo, pp. 44-49.

[8] Rollo, p. 50.

[9] Rollo, pp. 51-58.

[10] Rollo, p. 58.

[11] Rollo, pp. 59-60.

[12] Rollo, pp. 61-62.

[13] Rollo, pp. 70-71.

[14] Rollo, p. 71.

[15] Rollo, pp. 72-82.

[16] Rollo, pp. 87-88.

[17] Rollo, p. 88.

[18] See RTC Order dated December 2, 2013, rollo, pp. 70-71.

[19] *Tan v. Spouses Antazo*, G.R. No. 187208, February 23, 2011, citing *Romy's Freight Service v. Castro*, G.R. No. 141637, 8 June 2006, 490 SCRA 160, 166 citing *Office of the Ombudsman v. Magno*, G.R. No. 178923, 27 November 2008, 572 SCRA 272, 286-287 citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233; *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005) citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002) citing *Cuison v. Court of Appeals*, G.R. No. 128540, 15 April 1998, 289 SCRA 159, 171.

[20] *Almero v. People*, G.R. No. 188191, March 12, 2014, citing *Bala v. Martinez*, 260 Phil. 488 (1990).

[21] AN ACT AMENDING THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1866, AS AMENDED, ENTITLED "CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF, AND FOR RELEVANT PURPOSES."

[22] See Joint Omnibus Motion filed on December 19, 2013, rollo, p. 72.

[23] See Order dated March 20, 2006, rollo, p. 50.

[24] G.R. No. 164195, December 4, 2009.

[25] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 4, 2009, citing Fariscal Vda. De Emnas v. Emnas, L-26095, January 28, 1980, 95 SCRA 470.

[26] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 4, 2009, citing Gallardo-Corro v. Gallardo, G.R. No. 136228, January 30, 2001, 350 SCRA 568, 578; Gomez v. Presiding Judge, RTC Br. 15, Ozamis City, 249 SCRA 432, 438-439.

[27] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 4, 2009, citing Siy v. National Labor Relations Commission, G..R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162.

[28] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 4, 2009, citing Kline v. Murray, 257 P. 465, 79 Mont. 530.

[29] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 4, 2009, citing Flores v. Court of Appeals, G.R. No. 97556 & 101152, July 29, 1996.

[30] Apo Fruits Corporation v. Court of Appeals, G.R. No. 164195, December 4, 2009, citing Land Bank of the Philippines v. Arceo, G.R. No. 158270, July 21, 2008, 559 SCRA 85.

[31] G.R. No. 184116, June 19, 2013.

[32] Century Iron Works, Inc. v. Banas, G.R. No. 184116, June 19, 2013, citing Leoncio v. De Vera, G.R. No. 176842, February 18, 2008, 546 SCRA 180, 184, citing Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla Ferrolino v. Emerita Odeña, G.R. No. 163683, June 8, 2007, 524 SCRA 248.

[33] Ibid.

[34] G.R. No. 147257, July 31, 2013.

[35] Spouses Dycoco v. Court of Appeals, G.R. No. 147257, July 31, 2013, citing Bugarin v. Palisoc, 513 Phil. 59, 66 (2005).

[36] Spouses Dycoco v. Court of Appeals, G.R. No. 147257, July 31, 2013, citing Balayan v. Acorda, 523 Phil. 305, 309 (2006).

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