

FE J. BAUTISTA AND MILAGROS J. CORPUS, PETITIONERS, VS. HON. MALCOLM G. SARMIENTO, DISTRICT JUDGE, COURT OF FIRST INSTANCE OF PAMPANGA, BRANCH I AND THE PEOPLE OF THE PHILIPPINE...

G.R. No. L-45137. September 23, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

In this special civil action of Certiorari and Prohibition with Preliminary Injunction, petitioners assail respondent Judge Malcolm G. Sarmiento's denial of their Motion to Dismiss filed in the nature of demurrer to evidence in Criminal Case No. 808 for Estafa entitled "PEOPLE OF THE PHILIPPINES vs. FE BAUTISTA; MILAGROS CORPUS and TERESITA VERGERE", pending before the defunct Court of First Instance of Pampanga-Branch I.

An information charging Fe Bautista, Milagros Corpus and Teresita Vergere with estafa was filed before the sala of Judge Malcolm G. Sarmiento. The third accused, Teresita Vergere, was granted a separate trial. To prove its case, the prosecution presented during the trial the private complainant, Dr. Leticia C. Yap, as its only witness. Thereafter, petitioners, believing the prosecution failed to prove their guilt beyond reasonable doubt, moved to dismiss the case by way of demurrer to the evidence.

In an Order dated June 3, 1976 respondent Judge denied said motion.[1] The Order states:

"Fe Bautista and Milagros Corpus, accused, through counsel, filed a 'Motion to Dismiss' (Demurrer to Evidence) to the information charging the two accused for Estafa. The other third accused Teresita Vergere was granted a separate trial.

The grounds alleged in the Motion to Dismiss are as follows: First, the information alleges that the two accused received jewelries from Dr. Leticia C. Yap on April 19, 1975 on consignment. The defense' contention is that the jewelries were received by the said accused by virtue of purchase and sale. The defense overlooks the other allegation in the Information specifically alleging: —

'That these pieces of jewelries should be sold by the accused on commission basis and to pay or to deliver the proceeds thereof to Dr. Leticia C. Yap if sold, and if not sold to return sad jewelries.' x x x

'In spite of represented demands made on the said accused, said accused failed and refused and still fails and refuses to return the jewelries or deliver the proceeds thereof to the damage and prejudice of said Dr. Leticia C. Yap in the total amount of P77,300.00.'

The meaning of consignment is not a sale.

'It means that the goods sent by one person to another, to be sold or disposed of by the latter for and on account of the former. The transmission of the goods.'

Agency is within the foregoing meaning by Bouvier's Law Dictionary (Vol. 1, pp. 619-620)

The offended party testified that the accused acted as her agents for the sale of the jewelries. Second ground, that the prosecution failed to establish the prior demand to prove misappropriation on the part of the accused. Exhibits B and B-1 are documentary evidence to establish demand through Atty. Gorospe made by the offended party prior to the filing of the case. This letter of demand was subsequently made after several previous oral demands were made by the complainant on said accused.

The Court believes that the prosecution established a prima facie case of Estafa alleged in the Information against said accused on the evidence presented so far on record.

PREMISES CONSIDERED, the Court hereby denies the defense' Motion to Dismiss and orders the trial of this case for the reception of evidence of the accused on July 9, 1976 at 8:00 o'clock in the morning.

SO ORDERED."

Accordingly, a motion for reconsideration was duly filed[2] but was likewise denied "for lack of merit".[3] Hence, this petition.

Initially, it is necessary to point out that the remedy of certiorari is improper. The respondent Judge's order denying the petitioners' motion to dismiss the complaint by way of demurrer to the evidence is merely an interlocutory order. It cannot, therefore, be the subject of a petition for certiorari. What should have been done was to continue with the trial of the case and had the decision been adverse, to raise the issue on appeal.[4]

The rule that certiorari cannot be a substitute for appeal, however, admits an exception. This is when the questioned order is an oppressive exercise of judicial authority."[5] But, even granting petitioners the benefit of the exception, still Certiorari would not lie. For, as would be shortly explained, there was no arbitrary exercise of judicial authority.

It is the contention of petitioners that respondent Judge lost jurisdiction to proceed with the trial of the case and that he was in duty-bound to acquit them, considering his findings in denying their motion to dismiss that "x x x the prosecution established a prima facie case of Estafa alleged in the Information against said accused on the evidence presented so far on record". Petitioners further argue that in a criminal case, conviction can be had only upon proof beyond reasonable doubt and not on a mere prima facie case.

Since the denial of the motion to dismiss was anchored on a finding of a prima facie case, a clear understanding of the term and its implications is in order.

"A prima facie case is that amount of evidence which would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction, if not encountered and controlled by evidence tending to contradict it, and render it improbable, or to prove other facts inconsistent with it, and the establishment of a prima facie case does not take away the presumption of innocence which may in the opinion of the jury be such as to rebut and control it. Ex parte Parr, 288 P. 852, 855, 106 Cal. App, 95."[6]

There is no denying that in a criminal case, unless the guilt of the accused is established by proof beyond reasonable doubt, he is entitled to an acquittal. But when the trial court denies petitioners' motion to dismiss by way of demurrer to evidence on the ground that the prosecution had established a prima facie case against them, they assume a definite burden. It becomes incumbent upon petitioners to adduce evidence to meet and nullify, if not overthrow, the prima facie case against them.[7] This is due to the shift in the burden of evidence, and not of the burden of proof as petitioners would seem to believe.

When a prima facie case is established by the prosecution in a criminal case, as in the case at bar, the burden of proof does not shift to the defense. It remains throughout the trial with the party upon whom it is imposed — the

prosecution. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of the trial.[8] This burden of going forward with the evidence is met by evidence which balances that introduced by the prosecution. Then the burden shifts back.

A prima facie case need not be countered by a preponderance of evidence nor by evidence of greater weight. Defendant's evidence which equalizes the weight of plaintiff's evidence or puts the case in equipoise is sufficient. As a result, plaintiff will have to go forward with the proof. Should it happen that at the trial the weight of evidence is equally balanced or at equilibrium and presumptions operate against plaintiff who has the burden of proof, he cannot prevail.[9]

In the case at bar, the order denying petitioners' motion to dismiss, required them to present their evidence. They refused and/or failed to do so. This justified an inference of their guilt. The inevitable result was that the burden of evidence shifted on them to prove their innocence, or at least, raises a reasonable doubt as to their guilt.

Petitioners, likewise, assign as error the order of respondent Judge directing them to present their evidence after the denial of their motion to dismiss. By doing so, they contend that respondent Judge would, in effect, be relying on the possible weakness of the defense' evidence, rather than on the strength of the prosecution's own evidence in resolving their guilt or innocence.

We find petitioners' aforesaid submission utterly devoid of merit. Such a procedure finds support in the case of *Arbriol vs. Homeres*[10] wherein we held that -

"Now that the Government cannot appeal in criminal cases if the defendant would be placed thereby in double jeopardy (Sec. 2, Rule 118), the dismissal of the case for insufficiency of the evidence after the prosecution has rested terminates the case then and there. But if the motion for dismissal is denied, the court should proceed to hear the evidence for the defense before entering judgment, regardless whether or not the defense had reserved its right to present evidence in the event its motion for dismissal be denied. The reason is that it is the constitutional right of the accused to be heard in his defense before sentence is pronounced on him. Of course if the accused has no evidence to present or expressly waives the right to present it, the court has no alternative but to decide the case upon the evidence presented by the prosecution alone." (Underscoring supplied)

WHEREFORE, finding the order complained of to be well-taken and there being no grave abuse of discretion that attended its issuance, the instant petition is DISMISSED with costs against petitioners.

The Presiding Judge of the Regional Trial Court of Pampanga where this case is now assigned, is hereby ordered to continue immediately with the trial of Criminal Case No. 808 until its final disposition.

SO ORDERED.

Concepcion, Jr., Abad Santos, Escolin, and Alampay, JJ., concur.

Aquino, (Chairman), J., in the result.

[1] Annex "B".

[2] Annex "C".

[3] Annex "D".

[4] *Gamboa vs. Victoriano*, 90 SCRA 40.

[5] *Co Chuan Seng vs. CA*, 128 SCRA 308.

[6] Words & Phrases Permanent Edition 33, p. 545.

[7] Moran Rules of Court, Vol III, pp. 542-543; People. vs. Unao Moro, 101 Phil. 1226.

[8] Florenz D. Regalado, Remedial Law Compendium, 1979 Ed., p. 795.

[9] 20 Am. Jur. 1102-03.

[10] 84 Phil. 525.

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