

JOHN APOLLO S. MANAOG, PETITIONER, VS. HON. JUDGE ZEIDA GARFIN, JED MORADO Y EFONDO, AND DAX MORADO Y EFONDO, RESPONDENTS.

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

In this Petition for Certiorari,[1] petitioner John Apollo Manaog (Manaog) assails the Judgment[2] of the Regional Trial Court (RTC), the dispositive portion of which reads-

“WHEREFORE, in view of all of the foregoing, judgment is hereby rendered ACQUITTING the accused JED MORADO y EFONDO and DAX MORADO y EFONDO of the crime of Frustrated Homicide.

No Costs.

SO ORDERED.”

The antecedent facts are as follows:

Late evening of 5 May 2006, petitioner Manaog and his wife Rowena Manaog (Rowena) were at Bistro Roberto in Villa Caceres Hotel along Magsaysay Avenue, Naga City for a night out. They sat near the stage and ordered San Miguel Light, while watching the dancers on the dance floor who were enjoying themselves. Manaog noticed one male dancer, holding a lighted cigarette, dancing lewdly with a female. Because cigarette smoking was prohibited in the establishment, a security guard approached the cigarette-smoking male dancer and admonished him but to no avail. Many of the dancers got irked at what the male dancer was doing, and so most of them left the dance floor except only for a few who remained. Manaog just stared dispassionately at the male dancer (who was later identified to be respondent Jed Morado (Jed)). When Manaog felt the urge to relieve himself, he got up from their table and went to the comfort room. He was followed by Jed, who likewise relieved himself. While Manaog was fixing his hair, he glanced at the pants of Jed which happened to be the same as his pants. Jed glared at him and angrily uttered, “Ano?”. To avoid trouble with Jed who was drunk and angry, Manaog hurriedly left the comfort room and returned to his table. He did not say anything to his wife about what had happened.[3]

Manaog and his wife later left the bistro and decided to head home. While on his way out of the Bistro, Manaog noticed a long-haired man claiming a gun from the security guard of Villa Caceres. As the couple were about to board their car, respondent Dax Morado (Dax) shouted “Do you want trouble?” Thereafter, Jed, Dax and another unidentified person rushed to the car where the spouses boarded. Two of them pulled Manaog's leg and continuously punched his face and shoulders. Rowena shielded her husband from the blows being rained upon him. When Manaog was able to free himself from the embrace of Rowena, he took his gun which was hidden in the compartment of his car. He then got out of the car and while holding the gun with his two hands, aimed it upwards and uttered “Dai Kamo Mapundo?”(You're not going to stop?) The attackers wrestled the gun from him and one of them ejected all the bullets from the loaded magazine. While the gun was in the possession of the attackers, an unidentified man who was with the group shot Manaog. The person who was holding Manaog's gun pointed it behind Manaog's head. Manaog was shot several times, hitting him on his hand, leg and upper torso. As

Manaog thought that he was about to die, his wife ran towards the man holding the gun and kicked him. At that point, the security guard of San Diego Jazz bar intervened and fired a warning shot causing the group to run away. Rowena then shouted for help and several individuals assisted them. Manaog, who could not move well, because of his injuries was helped into the back seat of his car and brought to St. John Hospital where he was confined for two days. He was later transferred to the Bicol Medical Center where he stayed for three weeks. Because of what had happened to him, Manaog filed a complaint against the persons who attacked him.[4]

An information[5] was filed against accused Jed Morado y Efondo, Dax Morado y Efondo, John Doe, Peter Doe and Cesar Doe for the crime of frustrated homicide, the accusatory portion of which reads:

“That on or about May 6, 2006, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot herein complaining witness JOHN APOLLO S. MANAOG, hitting him on the right hand and other parts of his body, thereby causing upon him serious and mortal wound, thus, accused have performed all the acts of execution which would have produced the felony of Homicide as a consequence, but nevertheless did not produce it by reason of cause independent of the will of the accused, that is by the timely and able medical attendance given to the complaining witness which prevented his death, to his damage and prejudice.”

The prosecution presented the herein petitioner Manaog, Rowena, SPO1 Cesar Romero, P02 Rodel Llamado, Ramon Bongon, and Dr. Alexander Mariñas as witnesses.

The defense, to refute the allegations of the prosecution, presented three witnesses, namely Cesar Morado, and the two accused Jed and Dax.

On 9 November 2012, the RTC rendered the assailed judgment acquitting Jed and Dax of the crime of frustrated homicide. The RTC was not convinced that the two accused committed the crime. Pivotal to making such a conclusion were the statements of Rowena herself. According to the RTC, in Rowena's statement to the police in the early morning of 6 May 2006, nowhere was it shown that she knew two of the attackers. She merely reported that six unidentified male persons who also came from Villa Caceres Hotel mauled her husband; that one of the six pulled a handgun, aimed and shot at him several times. Yet, upon investigation by the prosecutor and in her sworn statement made on 26 May 2006, she thence named the two accused whom she claimed to know to be the sons of an officemate, Cesar Morado, as the two assailants. She declared that after her husband was shot, she turned to Cesar Morado and asked him: "Ano ta pinabayaan mo sinda? Bakong bistado mo ako? Tapos bistado mo siya? (Why did you let them be? Is it not that you know me? And you know him? (referring to her husband)). Such inconsistent statements of Rowena Manaog in her statement given to the police officers and in her testimony, coupled with the testimony of security guard Ramon Bongon, who failed to identify the two accused in court were found relevant and material by the trial court in overturning the positive identification made by Manaog. The RTC noted that while Rowena's testimony agreed on the essential facts and corroborated the testimony of her husband, it was, however, only their testimonies which made a consistent and coherent whole. Both of their testimonies were not corroborated by the other prosecution witnesses, particularly on the identification of the accused.

In the present petition filed before the Court, Manaog raises the following issues:

“WHETHER OR NOT THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ACQUITTING THE PRIVATE RESPONDENTS; and

WHETHER OR NOT THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT AWARDING DAMAGES TO THE PETITIONER.”

Manaog contends that it was grave injustice for the RTC to hold that the evidence presented by the prosecution was insufficient to support a conviction. He argues that the RTC cannot just brush aside all the evidence submitted by the prosecution on the basis of Rowena Manaog's out of court declaration. He points out that Rowena's statements, as reflected in the certification issued by the police, were never raised during the trial of the case; that a perusal of the transcript of stenographic notes shows that Rowena was not confronted with her alleged inconsistent statements; that the prosecution was thus deprived of due process as it was not given the opportunity to explain Rowena's out-of-court declaration.

Manaog also argues that it was incorrect to assume that Rowena failed to identify the Morados as perpetrators of the crime during the police questioning that was conducted right after the incident. According to Manaog, the RTC had overlooked the testimony of Police Officer Rodel B. Llamado, who testified that Rowena had mentioned that Chito Morado was among those involved in the shooting incident.

Manaog likewise asserts that the RTC also failed to consider the fact that the Morados had a serious altercation with him when it concluded that he and his wife were just making the accused as “scapegoats”. He also points out that it had remained uncontroverted that Chito Morado accompanied him to the hospital and that the latter tried to settle with them by offering the amount of P100,000.00.

In their Comment, the respondents assert that Manaog took a procedural misstep as it is only the State through the Office of the Solicitor General (OSG) that can elevate the case to the Court. The respondents argue that the capacity of the private complainant to question the dismissal or acquittal is limited only to the civil aspect of the case. The respondents also note that the arguments presented in the petition call for review of the evidence and a recalibration of the factual findings of the RTC, which may not be done in a Rule 65 petition for certiorari.

We find the petition to be bereft of merit.

It should be emphasized that Manaog took a procedural misstep when he filed the present petition without the representation of the OSG. Instructive on this point is the Supreme Court's ruling in *Bautista vs. Cuneta Pangilinan*:

“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.

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*,^[6] 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. xxx”[7]

In the present case, the petition filed by Manaog does not concern the civil aspect of the case but the validity of the judgment of acquittal itself. The arguments advanced by Manaog are focused on the criminal aspect of the case. Therefore, the petition should have been filed by the State through the OSG. Since the present petition was filed not at the instance of the OSG, the same should be dismissed. Manaog lacks the legal personality to question the RTC's judgment because it is only the OSG, which can bring actions on behalf of the State in criminal proceedings, before the Supreme Court and the Court of Appeals.[8]

Moreover, it must be stressed that a nullification of the judgment of acquittal by the RTC via the present petition for certiorari would clearly be a violation of the constitutional precept against double jeopardy.[9] For “it is clear in this jurisdiction that after trial on the merits, an acquittal is immediately final and cannot be appealed, on the ground of double jeopardy. The only exception where double jeopardy cannot be invoked is where there is a finding of mistrial resulting in a denial of due process.[10]

In the present case, the prosecution was allowed an exhaustive presentation and offer of its evidence. Thus, Manaog's contention that the prosecution was denied due process because it was not given the opportunity to explain Rowena's declaration in the certification issued by the police has no leg to stand on. A perusal of the records shows that Rowena underwent a thorough examination in chief. She was cross-examined by the defense counsel and again examined on re-direct examination. Hence, she was given all the opportunities to clarify all the matters relative to her testimony. The trial court may not be faulted for considering the certification of the police in its findings of facts as the same was offered in evidence by both the prosecution and the defense. There was likewise no proof that the trial was a sham. There being no badge or indication of a mistrial in this case, there is therefore no need to reexamine the evidence, otherwise the Court will be allowing an appeal to be made on an acquittal which would clearly be a violation of private respondents' right against double jeopardy.

It is also significant to note that the errors that Manaog ascribed to the RTC appear to be mere errors of judgment in the exercise of its jurisdiction, i.e., in the appreciation of the evidence on record and its conclusions anchored on said findings. Specifically, Manaog argues that the RTC gravely abused its discretion in acquitting the accused because contrary to its finding of insufficient evidence, the prosecution had sufficiently established the culpability of the accused. Manaog faults the RTC for brushing aside all the evidence presented by the prosecution on the basis of Rowena's declaration in the certification of the police; and for failing to consider that he and the Morados had a serious altercation before the shooting. Evidently, the matters being raised by Manaog are questions of fact the determination of which is beyond the scope of the extraordinary remedy of certiorari. Settled is the rule that factual matters cannot be inquired into by this Court in a certiorari proceeding. We can no longer be tasked to go over the proofs presented by the parties and analyze, assess and weigh them again to ascertain if the trial court was correct in according superior credit to this or that piece of evidence of one party or the other. The sole office of a writ of certiorari is the correction of errors of jurisdiction, including the commission of grave abuse of discretion amounting to lack of jurisdiction, and does not include a review of the RTC's evaluation of the evidence and the factual findings based thereon.[11]

Thus, even on the assumption that an error had been committed by the RTC in the evaluation of the evidence, such error is merely an error of judgment that cannot be remedied by certiorari. There being no error of jurisdiction that can be attributed to the RTC in its assessment of the evidence, certiorari will not lie.[12]

In fine, the petition should be denied not only for lack of merit but also for lack of legal personality on the part of the petitioner to question the criminal judgment of the RTC.

WHEREFORE, the petition is DENIED DUE COURSE and consequently DISMISSED.

IT IS SO ORDERED.

Bueser, and [*]Reyes Carpio, JJ., concur.

[*] Actg. Third Member per Office Order No. 81-15-ABR dated March 16, 2015.

[1] Rollo, pp. 3-48.

[2] Written by Judge Zeida Aurora B. Garfin, RTC, 5[th] Judicial Region, Branch 19, Naga; Rollo, pp. 52-61.

[3] Ibid.

[4] Ibid.

[5] Rollo, p.63.

[6] G.R. No. 152903, 17 July 2006, 495 SCRA 368.

[7] G.R. No. 189754, 24 October 2012, 684 SCRA 521.

[8] Ibid.

[9] Metropolitan Bank and Trust Company vs. Hon. Regino T. Verdiano II et al., G.R. No. 118251, 29 June 2001, 360 SCRA 359.

[10] People vs. Hon. Sandiganbayan (Fifth Division) et al., G.R. No. 173396, 22 September 2010, 631 SCRA 128.

[11] People of the Philippines vs. Joven de Grano et al., G.R. No. 167710, 5 June 2009, 588 SCRA 550.

[12] Dennis Villareal vs. Consuelo Aliga, G.R. No. 166995, 13 January 2014.

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