

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. VICTORIA R. VALLARTA, ACCUSED, THE HONORABLE JUDGE JULIAN E. LUSTRE, AND VICTORIA R. VALLARTA, RESPONDENTS.

G.R. No. L-32728. June 30, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

This certiorari proceeding had its origin in an order of respondent Judge Julian E. Lustre,[1] now retired, denying a motion on the part of the private prosecutor to correct the transcript of stenographic notes. The assailed order speaks for itself. Its opening paragraph reads thus: "Counsel for the private prosecution moves that the transcript of the stenographic notes of May 15, 1970 be corrected on the ground that it did not reflect the true proceedings, without, however, mentioning in what way the transcript failed to reflect the true proceedings. It merely alleges that the same would be explained and shown to the Court at the hearing of the motion. At the hearing of the said motion movant claims that the stenographer who took down the notes failed to take notes of that portion of the testimony of the complaining witness Margarita Cardenas regarding the place where the pieces of jewelry, subject of the case, were delivered to the accused. The Claim is disputed by counsel for the accused. The Court finds the motion without merit. The claim is not corroborated by the notes of the Presiding Judge. The stenographer who took down the notes of the hearing after a careful comparison of the transcript with her notes certified that the transcript is a faithful transcription of the notes she took at the hearing. The trial was on May 15, 1970 and the 'Motion to Correct the Transcript of Stenographic Notes' was filed on June 29, 1970, one month and fourteen days after the taking of the notes. After the lapse of that period the memory can no longer be trusted to retain verbatim the alleged questions and answers omitted." [2] Then came the dispositive portion: "[In view of all the foregoing], the Court denies the Motion to Correct Transcript of Stenographic Notes, dated June 26, 1970." [3] The order on its face does not appear open to objection, much less can be it said that there was a grave abuse of discretion. It speaks with clarity and to the point. Nonetheless, the private prosecutor, in the name of the People of the Philippines, would set it aside on the ground of the likely prejudice to his client as there was then pending in the sala of respondent Judge a motion to dismiss by the accused. Without the correction sought to be made, it could be acted on favorably. So it is contended. Tersely put, that is the essence of the case. As thus viewed, it is far from persuasive. It cannot be said then that there is justification for the grant of certiorari if deference be paid to the authoritative and well-settled doctrines. No jurisdictional infirmity can be discerned. The petition must be dismissed.

As early as September 10, 1913, Justice Moreland, as ponente, in *Herrera v. Barreto and Joaquin*, [4] could categorically state: "It has been repeatedly held by this Court that a writ of certiorari will not be issued unless it clearly appears that the court to which it is to be directed acted without or in excess of jurisdiction. It will not be issued to cure errors in the proceedings or to correct erroneous conclusions of law or of fact. If the court has jurisdiction of the subject matter and of the person, decisions upon all questions pertaining to the cause are decisions within its jurisdiction and, however irregular or erroneous they may be, cannot be corrected by

certiorari." [5] This doctrine was reiterated by him in six subsequent cases. [6] The jurisdictional infirmity may be caused by a grave abuse of discretion defined in *Abad Santos v. Tarlac* [7] as "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction." [8] This formulation has found favor with this Court as shown by the number of later cases that speak similarly. [9] "For certiorari to lie," as was stressed anew in *Panaligan v. Adolfo*, [10] decided less than two years ago, "there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions." [11] There is nothing in the present petition indicative of such misuse of the power properly vested in courts.

1. That is why the conclusion cannot be other than the dismissal of the petition. As far back as *United States v. Pons*, [12] promulgated in 1916, this Court, in an opinion by Justice Trent, correctly warned against reliance on "uncertain oral evidence * * * so imperfect on account of the treachery of memory." [13] According to the assailed order, the motion for correction of the transcript of stenographic notes of May 15, 1970, was based on the allegation that "it did not reflect the true proceedings." [14] He found the contention untenable. It was disputed by counsel for the accused. It was not corroborated by his notes. It was not in accordance with the notes of the stenographer who "certified that the transcript is a faithful transcription of the notes she took." [15] Moreover, the motion to correct came much too late. As set forth in the order of respondent Judge: "The trial was on May 15, 1970 and the 'Motion to Correct the Transcript of Stenographic Notes,' was filed on June 29, 1970, one month and fourteen days after the taking of the notes. After the lapse of that period the memory can no longer be trusted to retain verbatim the alleged questions and answers omitted." [16] It would be a gross perversion of language to characterize such order as a manifestation of arbitrary whim or caprice. If the state of the evidence as reflected in the transcript may be less than desirable from the standpoint of the private prosecution, the fault certainly does not lie with the trial judge.

2. While the petition was filed in the name of the People of the Philippines, it was filed by the counsel for the offended party as private prosecutor. There was not even an indication that the City Fiscal of Quezon City was in agreement with the claim made by him. What was pointed out by Justice Antonio in *Tan, Jr. v. Gallardo* [17] bears repeating: "There is no question that the Solicitor General represents the People, of the Philippines or the State in criminal proceedings pending either in the Court of Appeals or in this Court." [18] Cases of this character would take less of the time of this Tribunal if counsel for private parties would take pains to consult the Office of the Solicitor General as to whether remedial action could be sought from this Court. That way, there would be less occasion for this Court spending time and effort, as did the private party, in the appraisal of a matter which fails to justify resort to a certiorari proceeding.

3. This Court though is not insensible to the problem posed by the private prosecutor of a failure of justice if the stenographic notes were to be left as they are, this on the assumption that the, fears expressed in the petition are not totally without foundation. Even so, the remedy is not to castigate respondent Judge for acting the way he did. The blame, if any, falls on the private prosecutor. To assure, however, that the truth should prevail and a possible acquittal should not rest on a technicality, the prosecution could move for the reopening of the proceedings so that it may be afforded the opportunity of presenting evidence on the matter in dispute.

WHEREFORE, the petition for certiorari is dismissed. Prior to a ruling by the Judge designated in place of respondent Judge, Lustre, now retired, on the motion to dismiss, in the interest of justice, the prosecution may move for reopening to enable it to present evidence on the matter in dispute.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

- [1] Victoria R. Vallarta was named the private respondent.
- [2] Annex E of Petition, 1-2.
- [3] Ibid, 2.
- [4] 25 Phil. 245.
- [5] Ibid, 250-251. Reference was made by Justice Moreland to the following decisions: *In re Prautch*, 1 Phil. 132 (1902); *Dy Chuan Leng v. Ambler*, 1 Phil. 535 (1902); *De los Reyes v. Roxas*, 1 Phil. 625 (1903); *Araneta v. Heirs of Gustilo*, 2 Phil. 60 (1903); *Springer v. Odlin*, 3 Phil. 344 (1904); *Felizardo v. Justice of the Peace*, 3 Phil. 635 (1904); *Herman v. Crossfield*, 7 Phil. 259 (1906); *Somes v. Crossfield*, 8 Phil. 284 (1907); *Artacho v. Tan Chu Chay*, 11 Phil. 47 (1908); *Lagahit v. Nengasca*, 12 Phil. 423 (1909); *Banes v. Cordero*, 13 Phil. 466 (1909); *Arzadon v. Chanco*, 14 Phil. 710 (1910); *United States v. Court of First Instance*, 24 Phil. 321 (1913).
- [6] Cf. *Gala v. Cui*, 25 Phil. 522 (1913); *Napa v. Weissenhagen*, 29 Phil. 180 (1915); *Yangco v. Court of First Instance*, 29 Phil. 183 (1915); *Government v. Judge of the Court of First Instance*, 34 Phil. 157 (1916); *Bustos v. Moir*, 35 Phil. 415 (1916); *De la Cruz v. Moir*, 36 Phil. 213 (1917).
- [7] 67 Phil. 480.
- [8] Ibid, 482. Cf. *Alafriz v. Noble*, 72 Phil. 278 (1941).
- [9] Cf. *Tan v. People*, 88 Phil. 609 (1951); *Negado v. Castro*, 104 Phil. 103 (1958); *Liwanag v. Castillo*, 106 Phil. 375 (1959); *Hamay v. Secre-tary of Agriculture*, 106 Phil. 104 (1960); *Pajo v. Ago*, 108 Phil. 905 (1960); *Abig v. Constantino*, 112 Phil. 236 (1961); *Federation of United Namarco Distributors v. NAMARCO*, 114 Phil. 802 (1962); *Solidum v. Hernandez*, 117 Phil. 335 (1963).
- [10] L-24100, September 30, 1975, 67 SCRA 176.
- [11] Ibid, 180.
- [12] 34 Phil. 729.
- [13] Ibid, 734.
- [14] Annex E of Petition, 1.
- [15] Ibid, 2.
- [16] Ibid.
- [17] L-41213-14, October 5, 1976, 73 SCRA 306.
- [18] Ibid, 313.

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