

HERMINGILDA MARCO Y MONTERO, PETITIONER, VS. THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF QUEZON CITY – BRANCH 215 AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

Ponente: SALANDANAN-MANAHAN, J.

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SALANDANAN-MANAHAN, J.:

For consideration of this Court is the instant Petition for Certiorari with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary & mandatory injunction[1]. In a Resolution[2] dated 24 January 2014, the People, through the Office of the Solicitor General (OSG), was required to file a Comment on the Petition and to show cause why the injunctive writ should not issue, inter alia. On 20 March 2014, the OSG filed the required Comment[3] within the extended period prayed for[4].

The Court now addresses the petition in full.

Factual Antecedents

The controversy stemmed from the 27 August 2004 Information[5] filed before the Regional Trial Court, Branch 215, Quezon City and docketed as Criminal Case No. Q-04-130317 charging herein petitioner for Estafa thru Falsification of Public Document, to wit:

“That on or about the 11[th] day of October, 1990, in Quezon City, Philippines, the above-named accused, a private individual, did then and there, willfully, unlawfully and feloniously defraud Spouses TEODORO AND LOURDES AMOR, in the following manner, to wit: the said accused with intent to defraud and cause damage, prepared, forged and falsified or caused the preparation, forgery and falsification of a public document denominated as Deed of Sale of a parcel of lot awarded to Rosa A. Sayosa by the National Housing Authority notarized before Liberty S. Perez, Notary Public, by then and there, presenting a Special Power of Attorney, making it appear that accused was still the acting attorney in fact of Rosa A. Sayosa and entered into an agreement and signed the Deed of Sale with the National Housing Authority when in truth and in fact said accused knew fully well that said representations were not true as Rosa A. Sayosa already died on July 25, 1990 and that the said Special Power of Attorney had no longer any force and effect, thereby making untruthful statements in the narration of facts and by strength of such false pretenses and falsification accused were able to transfer the property in her name, to the damage and prejudice of the said offended party and of public interest.

CONTRARY TO LAW.”

The petitioner was arraigned and pleaded “Not Guilty”. Thereafter, Pre-trial and Trial proceedings ensued.[6]

On 14 February 2012, the prosecution concluded its presentation of evidence. The respondent court issued an Order[7] which gave the prosecution a period of thirty (30) days or until 15 March 2012 within which to file its formal offer of evidence. On 07 May 2012, the respondent court issued an Order[8] granting the prosecution an additional five (5) days or until 12 May 2012 within which to file its formal offer of evidence.

The prosecution failed to file the formal offer of evidence within the extended period which prompted the petitioner to file a Motion to Dismiss[9] on 26 July 2012. On 07 September 2012, the prosecution filed the formal offer of evidence[10] sans the documentary exhibits. On motion, the respondent court gave the prosecution a period of ten (10) days within which to file said documents.

On 04 October 2012, the respondent court received petitioner's Comment to Prosecution's Formal Offer of Evidence[11] with a manifestation that the documentary exhibits remained unattached to the formal offer and thus prayed that its 26 July 2012 Motion to Dismiss be granted.

On 17 October 2012, the respondent court issued an Order[12] which DISMISSED the case due to absence of documentary exhibits to prove the requisites of the crime charged. The salient portion of the Order is herein quoted for reference, to wit:

“Considering that the prosecution has no documentary evidence to prove all the essential requisites of the crime charged, the accused is ipso facto entitled to have this criminal case be DISMISSED.

WHEREFORE, the 'Formal Offer of Evidence (For the Prosecution)', is DENIED, there being no exhibits submitted, while the 'Compliance' is NOTED.

Due to absence of documentary evidence the prosecution failed to prove all the essential requisites of the crime, this case is hereby DISMISSED.

SO ORDERED.”

However, in a hearing on 03 December 2012, the respondent court reconsidered said Order upon the prosecution's manifestation that the pertinent documentary exhibits were merely misfiled. The fallo of the 03 December 2012 Order[13] reads:

“WHEREFORE, the October 17, 2012 Order is reconsidered and set aside. The formal offer of evidence for the prosecution shall be deemed submitted for resolution after the defense have been furnished a copy of the documents and with the defense having submitted its objection/comment thereto.”

On 05 December 2012, the petitioner filed a Motion to Set Aside Order[14] raising the Constitutional prohibition against double jeopardy as ground therefore. In accord with the respondent court's 04 March 2013 Order[15], the prosecution filed its Compliance[16] citing therein relevant case laws to counter petitioner's Motion to Set Aside Order. On 26 March 2013, the respondent court received petitioner's Comment[17] on prosecution's Compliance.

On 01 April 2013, the respondent court issued its assailed Order[18] the dispositive portion of which is herein quoted, viz:

“WHEREFORE, premises considered, the 'Motion to Set Aside Order' is DENIED for want of merit.”

On 12 August 2013, the respondent court issued its second assailed Order[19] which DENIED petitioner's Motion for Reconsideration[20]. Hence, this instant petition for certiorari raising a sole issue.

The Issue

WHETHER OR NOT THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT THERE WAS NO DOUBLE JEOPARDY CONSIDERING THAT THE ORDER DISMISSING THE CASE WAS WITH THE EXPRESS CONSENT OF PETITIONER, AND CONSIDERING FURTHER THAT THE DOCUMENTARY EXHIBITS WERE MERELY INADVERTENTLY MISFILED IN ANOTHER CASE AND THEREFORE IT CANNOT BE SAID THAT THE PROSECUTION HAS NO DOCUMENTARY EVIDENCE TO PROVE ALL THE ESSENTIAL ELEMENTS OF THE CRIME CHARGED.

Court Ruling

The instant petition for certiorari calls for the determination on whether the respondent court gravely abused its discretion in issuing its 03 December 2012 Order which reversed and set aside its 17 October 2012 Order thereby reinstating Criminal Case No. Q-04-130317, denying petitioner's Motion to Set Aside Order and the concomitant Motion for Reconsideration.

Case laws define grave abuse of discretion amounting to lack or excess of jurisdiction as “such capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.”[21]

With the foregoing definition as guide, We now proceed to determine whether the second jeopardy attaches when the respondent court promulgated its 03 December 2012 Order.

The Constitutional guarantee against double jeopardy is provided under Section 21, Article III of the 1987 Philippine Constitution, to wit:

“Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punishable by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.”

This guarantee is given a procedural framework and is incorporated in Section 7, Rule 117 of the Revised Rules of Criminal Procedure. The full text of the provision states, viz:

“Sec. 7. Former conviction or acquittal; double jeopardy. - When and 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.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

- (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;
- (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or
- (c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense.” (Emphasis added.)

According to jurisprudence, double jeopardy exists when: (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.[22] The first jeopardy attaches, as drawn from the Rules, when the following requisites are met: “(a) a valid complaint or information is filed; (b) before a competent court; (c) where the defendant had pleaded to the charge; and (d)

the defendant was acquitted, or convicted, or the case against him dismissed or otherwise terminated without his express consent.”[23]

Relevantly, anent the 4th cited requisite, the petitioner points out that there are exceptions when expressly consented dismissal of a criminal case suffices for jeopardy to attach. In the cases of *People v. Verra*[24] and *Philippine Savings Bank v. Bermoy*[25] the Supreme Court held:

“x x x There are however two occasions when double jeopardy will attach even if the motion to dismiss the case is made by the accused himself. The first is when the ground is insufficiency of evidence of the prosecution, and the second is when the proceedings have been unreasonably prolonged in violation of the right to a speedy trial.” (Emphasis supplied.)

The petitioner finds the foregoing pronouncement applicable to her and alleges that when the respondent court acted on her motion and ruled to dismiss the criminal case against her “due to absence of documentary evidence (sic) the prosecution failed to prove all the essential requisites of the crime” (Supra at note 12), the same amounts to a dismissal by reason of insufficiency of evidence which is one of the case law exceptions on consented dismissal of criminal cases.

The contention is specious.

Double jeopardy which is also called the finality-of-acquittal rule traces its origin from the Anglo-American system of jurisprudence and Anglo-Saxon maxims of common law[26]. An in-depth understanding of the finality-of-acquittal rule reveals that insufficiency of evidence, in relation to expressly consented dismissal of criminal cases, must be understood to be that which involves a determination of evidence to ascertain the guilt or innocence of the accused.

As held in the early case of *People v. Salico*[27], the Supreme Court clarified that not all dismissals of criminal cases automatically result to jeopardy. Besides dismissals due to the violation of an accused's right to speedy trial, only dismissals which amounts to “acquittal” or such dismissals where the guilt or innocence of the accused has been determined may give rise to jeopardy. The Supreme Court held, viz:

“x x x Acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that defendant's guilt is beyond a reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. The only case in which the word dismissal is commonly but only correctly used, instead of the proper term acquittal, is when, after the prosecution has presented all its evidence, the defendant moves for the dismissal and the court dismisses the case on the ground that the evidence fails to show beyond a reasonable doubt that the defendant is guilty; for in such case the dismissal is in reality an acquittal because the case is decided on the merits. If the prosecution fails to prove that the offense was committed within the territorial jurisdiction of the court and the case is dismissed the dismissal is not an acquittal, inasmuch as if it were so the defendant could not be again prosecuted before the court of competent jurisdiction; and it is elemental that in such case the defendant may again be prosecuted for the same offense before a court of competent jurisdiction. (Emphasis added.)

Thus, in the case *People of the Philippines v. Sandiganbayan*[28], the Supreme Court demonstrates that insufficiency of evidence as an element of jeopardy finds application under Section 23, Rule 119 of the Revised Rules of Criminal Procedure which relates to demurrer to evidence. The petitioner's theory that the dismissal of her criminal case is based on insufficiency of evidence is unavailing because insufficiency of evidence has a technical application which necessitates the determination of evidence.

It must be noted that the dismissal of petitioner's criminal case is upon her motion and is predicated on the prosecution's excusable blunder in misplacing or misfiling the documentary exhibits required to be attached to the formal offer. Apparently, no complete evidence has yet been received and no determination of the guilt or innocence of the petitioner has been made.

Verily, the dismissal of petitioner's criminal case is not due to insufficiency of evidence. Her motion to dismiss the criminal case against her serves as a waiver on the constitutional prohibition against double jeopardy. The first jeopardy failed to attach such that the reinstatement of her criminal case is a mere continuation thereof.

In fine, no grave abuse of discretion can be ascribed on the respondent court when it promulgated its 03 December 2012, 01 April 2013 and 12 August 2013 Orders which reinstated Criminal Case No. Q-04-130317, denied the Motion to Set Aside Order and denied the Motion for Reconsideration thereto, respectively.

WHEREFORE, the instant Petition for Certiorari is hereby DENIED. Consequently, the petitioner's application for the issuance of a temporary restraining order and/or writ of preliminary injunction is likewise DENIED for being a mere adjunct to the main suit.

SO ORDERED.

Dimaampao and Ybañez, JJ., concur.

[*] The composition of the Thirteenth (13th) Division is pursuant to Office Order No. 110-14-ABR which took effect on 01 April 2014.

[1] Rollo, P. 3.

[2] Id., P. 86.

[3] Id., P. 94.

[4] Id., P. 90. See Motion for Extension of Time.

[5] Id., P. 33. See Annex "D" of the Petition.

[6] Id., Pp. 7 & 96. Undisputed statement of facts from the Petition and Comment.

[7] Id., P. 35. 14 February 2012 Order.

[8] Id., P. 36.

[9] Id., P. 37.

[10] Id., P. 41.

[11] Id., P. 46.

[12] Id., P. 49.

[13] Id., P. 51.

[14] Id., P. 53.

[15] Id., P. 63.

[16] Id., P. 65.

- [17] Id., P. 69.
- [18] Id., P. 24.
- [19] Id., P. 26.
- [20] Id., P. 28. Filed on 27 May 2013.
- [21] Ysidro v. Hon. Leonardo-De Castro, G.R. No. 171513, February 06, 2012.
- [22] Cerezo v. People of the Philippines, G.R. No. 185230, June 01, 2011.
- [23] Ibid.
- [24] G.R. No. 134732, May 29, 2002.
- [25] G.R. No. 151912, September 26, 2005.
- [26] People v. Hon. Velasco, G.R. No. 127444, September 13, 2000.
- [27] G.R. No. L-1567, 84 Phil 722, October 13, 1949.
- [28] G.R. No. 140633, February 04, 2002.

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