

ARTURO DEL POZO, DOMINADOR B. BORJE, EUGENIO LAMBIQUIT AND JUAN LAMBIQUIT, PETITIONERS, VS. HON. ALFONSO PENACO, CITY JUDGE, BRANCH 1, OZAMIZ CITY, RESPONDENT.

G.R. No. L-48302. November 23, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

In this special civil action of certiorari, the crucial question is whether or not the petitioners -- accused in a criminal case for falsification of public document -- were denied due process when the respondent City Court Judge refused to heed their repeated pleas for the postponement of the trial pending resolution by this Court of a petition for said Judge's inhibition, the Judge having instead ultimately pronounced said motions for postponement to be dilatory, and declared the case submitted for decision without the defense having completed presentation of its evidence, and thereafter promulgated judgment convicting the defendants of the crime charged.[1]

Petitioner Borje was the counsel for plaintiffs in a civil action instituted in the Court of First Instance of Misamis Occidental, at Ozamiz City, Civil Case No. OZ-478 entitled, "Mariana Rey and Eugenio Lambiquit versus Lim An, Natividad Pintacasi, Benefredo Lim, Pedro Te, and Antonia Lim." The presiding Judge was Hon. Geronimo Marave.[2]

By reason of certain events which need not be gone into at this time, an information for falsification of a public document was filed against said Atty. Dominador Borje and three (3) others, Arturo del Pozo, Eugenio Lambiquit and Juan Lambiquit. The indictment was presented by then City Fiscal Amado Gador with the City Court of Ozamiz City, on complaint of Judge Marave. The case was docketed as Case No. 9550 of the City Court.[3]

Trial of the criminal action did not however commence until about a year later, on account of efforts of the accused to have the information reviewed and withdrawn by the Department of Justice, and to bring about inhibition of the presiding Judge.[4] Trial began on November 2, 1976 and proceeded more or less normally until the prosecution rested (in April 1977) after having presented six (6) witnesses, and the defense, for its part, had called eight (8) witnesses to the stand. But at this time another interruption of the trial occurred, caused by the filing by the accused in October, 1977 of a petition for certiorari, prohibition and/or mandamus before this Court praying for the dismissal of the case.[5] The petition was however dismissed for lack of merit on January 25, 1978.[6]

Thereafter, respondent Judge Penaco set the case for continuation of trial on March 20, 1978; but trial was reset to March 27, 1978 on motion of the accused. On this date, the accused again moved for the deferment of the trial until resolution of a petition for inhibition which they had filed with this Court (by registered mail) on the very same day, March 27, 1978. The petition[7] sought the inhibition of Judge Penaco in Criminal Case No. 9550 and Criminal Case No. CCI-3,[8] and eventually resulted in a Resolution by this Court on November 14, 1978 which in part states:[9]

"It appearing that respondent Judge has exhibited personal antagonism to petitioners, the Court RESOLVED to grant the petition to transfer Criminal Case No. CCI-3 from Branch 1, City Court of Ozamiz City to any other city court outside Ozamiz City, but to DENY the petition with respect to Criminal Case No. 9550 in view of its having been already resolved and terminated."

In the meantime, however (i.e., during the pendency of the inhibition proceeding in this Court), Criminal Case No. 9550 had been "resolved and terminated," as stated in the resolution just quoted. What happened was that on March 27, 1978 Judge Penaco issued an Order (1) denying the motion to defer the trial, branding it as part of a "clever scheme to derail at every turn the speedy administration of justice," and (2) in view of the "conspicuous absence of the accused," declared the case submitted for decision and set the promulgation of sentence on April 5, 1978.[10]

Attempts by Atty. Borje and his co-accused to have the order reconsidered all failed. They filed on March 31, 1978 a "Motion to Give Respect to the Expectations of the Honorable Supreme Court," declaring that they had filed another petition for inhibition and prohibition with the Supreme Court (actually posted only on April 4, 1978).[11] The motion was denied by Judge Penaco, by Order dated March 31, 1978. His Honor characterized the motion as yet "another dilatory tactic to defeat the ends of justice," and reiterated his intention to promulgate judgment on April 5, 1978, as scheduled.[12] The four accused filed another motion, this time claiming that they had not all been properly notified of the hearing of March 27, 1978, and that accused Juan Lambiquit was in fact present in the Court on that day, and praying that the promulgation of judgment be put off until they had been accorded the chance to complete their evidence and make formal offer of their exhibits.[13] The motion was also denied, by Order dated April 3, 1978.[14] And on the same day, Judge Penaco signed a decision finding Atty. Borje and his three (3) co-accused guilty beyond reasonable doubt of the crime charged, and sentencing each of them to an indeterminate prison term ranging from a minimum of four (4) months and one (1) day of arresto mayor, to a maximum of four (4) years and two (2) months and one (1) day of prisión correccional, and to pay the costs.[15]

The verdict of conviction was promulgated on April 5, 1978 over the opposition of the accused.[16] The latter filed a motion for new trial on the same day, which they amended on April 11, 1978.[17] They also sought to schedule the motion for hearing on April 26, 1978; but the Court denied the motion on April 19, 1978.[18]

Notice of the order of denial of their motion for new trial was served on Atty. Borje on April 29, 1978. Eight (8) days afterwards, or on May 8, 1978, he and his co-accused mailed to this Court the petition which has initiated the special civil action at bar: a petition for certiorari with preliminary injunction, seeking (a) the annulment of the judgment of conviction promulgated against them; (b) the grant to them of a new trial; and (c) the inhibition of Judge Penaco in Criminal Case No. 9550.[19] They later amended the petition.[20]

On May 23, 1978, Judge Penaco issued an Order declaring that the judgment of conviction dated April 3, 1978 (and promulgated on April 5 [and 14], 1978) had become final and executory, no appeal having been seasonably taken therefrom.[21] This prompted Atty. Borje and his co-accused to file with this Court an "Urgent Motion for the Issuance of a Restraining Order and to Admit Amended Petition." [22] By this Court's Resolution dated June 7, 1978, the motion was granted and a temporary restraining order was issued enjoining Judge Penaco from enforcing and/or otherwise carrying out his Order of May 23, 1978 and any warrant of arrest.

The answer to the petition has since been filed,[23] as well as the respective memoranda of the parties, which the Court required.[24]

Some six (6) years later, in a surprising turn of events, there was filed in the proceeding at bar a joint "Manifestation with Prayer to Order Dismissal of Criminal Case" (i.e., Case No. 9550, for falsification). The

pleading was dated December 27, 1984, and was signed by Judge Geronimo Marave -- the complainant in the falsification case against the petitioners -- and Judge Penaco himself, with the concurrence of the public prosecutor, Fiscal Rosalio S. Rasonable.[25] The joint Manifestation pertinently stated the following:

"* *. The COMPLAINANT in the criminal case and the Respondent Judge have become very old. It is their desire that this case be resolved with their conscience clear so that they will be in peace whenever they will come to rest.

"Indeed, the evidence on record indicates that there is nothing that would link petitioner Dominador B. Borje to the commission of the crime charged. The circumstances proved by the prosecution do not connect the said petitioner to all the acts that would sustain a conviction. He did not have any motive to commit the crime charged.

"It is also noted that the Prosecuting Fiscal even refused to answer the petition. He did not file any opposition thereto."

This Court however denied the plea of Judge Marave and Judge Penaco, by Resolution dated February 18, 1985.[26]

In another intriguing development, the son of Judge Marave, Atty. Geronimo S. Marave, Jr., instead of pressing his father's expressed plea to have Criminal Case No. 9550 dismissed, as might be expected, formally asked that the instant case be resolved as soon as possible. He filed a "Motion to Resolve" dated October 14, 1985 in which he stated that before his father died on September 3, 1985, he had asked him to "follow up the case to its resolution." [27] As if to ensure that his message would be clearly understood and otherwise underscore his determination, he sent to this Court on the same date a letter of similar import.[28]

On the other hand, Judge Penaco and Fiscal Rasonable persisted in their efforts to have Criminal Case No. 9550 dismissed. In another pleading (entitled "Manifestation") submitted to this Court under date of June 30, 1986,[29] they alleged inter alia that --

"After going over the records, your respondent realizes that Atty. Dominador B. Borje was convicted in which, during some settings, he was not notified and the same were tried in his absence without the attention of the respondent Judge being called. Indeed, due process was inadvertently overlooked.

"In the interest of justice and fair play, and considering the length of time of about ten (10) years now, Atty. Borje should be freed from the sword of Damocles hanging over his head."

This was followed not long afterwards by a motion ("Most Respectful Motion for Judgment"), this time filed by petitioner Borje under date of July 23, 1986, in which he stated, among other things, that he had "already suffered so much because of the trumped up criminal case," and he would like to see justice rendered before he dies.[30]

On September 3, 1986, the Court resolved to require Judge Penaco and Fiscal Rasonable to give a detailed amplification of their manifestation of June 30, 1986. They did so, by a memorandum dated October 6, 1986 setting out the following facts:

a)

The criminal case was set for hearing on March 27, 1978, but "the process server Napoleon Dajao, who was then faltering and seemingly deranged, served the notice and subpoena to a stranger and not a part of the office of Atty. Dominador Borje;"

b)

At the trial, Judge Penaco "wrongly believed" that accused Borje deliberately absented himself;

c)

Judge Ong (originally presiding over the case) inhibited himself when Judge Marave tried to pressure him to order the arrest of Atty. Borje for non-appearance despite a sworn medical certificate showing Borje's heart illness;

d)

Judge Paredes took over (from Judge Ong) but as he was then retiring, he merely endorsed the case to Judge Penaco without any resolution of the Supreme Court authorizing Judge Penaco to take over;

e)

On the mistaken belief that Borje was notified but did not appear at the hearing, the case was deemed submitted for decision as of March 27, 1978;

f)

As a result, the accused failed to offer their evidence having been denied the opportunity to do so; hence they were denied their day in court;

g)

The decision was prepared "in haste" having been rendered on April 3, 1978, or only seven (7) days from March 27, 1978, and then promulgated on April 5, 1978;

h)

No preliminary investigation was conducted prior to the filing of the complaint;

i)

The original of the alleged falsified document was never presented by the complainant Judge Marave;

j)

Two court employees of the Court of First Instance of Misamis Occidental, Eduardo Montealto and Victoriano Abogatal, who were subordinates of Judge Marave, testified that they were 'pressured' to execute false affidavits implicating the accused to the alleged falsification; and

k)

They therefore wanted to rectify the wrong done to Borje.

Not unexpectedly, Atty. Marave, Jr. reacted adversely to this second manifestation of Judge Penaco and Fiscal Rasonable. He lost no time in making known his opposition thereto by filing his own Manifestation dated October 12, 1986.[31] He averred that --

a)

Judge Penaco and Fiscal Rasonable had already retired from the service;

b

Criminal Case No. 9550 had long become final and executory;

c)

Rasonable was not the prosecuting fiscal in the subject criminal case but Amado Gador; hence Rasonable has no basis to make a manifestation that due process was inadvertently overlooked in the subject criminal case; and

d)

The manifestation of Penaco and Rasonable is intended to delay the resolution of the case.

In yet another manifestation filed on March 28, 1987, Atty. Marave, Jr. expressed the view that Atty. Borje and his co-accused had failed to appeal from the judgment of conviction, and the petition for certiorari at bar had been filed beyond the period of appeal, and prayed for the dismissal of the petition and the lifting of the temporary restraining order.[32] Judge Penaco in turn filed a "Counter-Manifestation" dated April 23, 1987 taking exception to Atty. Marave's claim that "somebody is preventing the instant petition from being resolved." [33]

The first legal issue to be resolved is the propriety and efficacy of the selection by the petitioners of the extraordinary remedy of certiorari -- instead of an ordinary appeal -- as the mode of obtaining relief from the judgment of conviction promulgated against them by the City Court.

It bears stressing -- as we have by a strange coincidence, done in another case deliberated upon at about the same time as the instant proceeding[34] -- that in civil or criminal actions, the remedy from a judgment or other final order is appeal, in accordance with Rule 40 (or 123) or 41 (or 122) of the Rules of Court, not a special civil action of certiorari under Rule 65 of the Rules of Court. Appeal -- whether from an inferior court or a Regional Trial Court (formerly Court of First Instance), and whether by writ of error (where issues of fact and law are intended to be raised) or by certiorari (where only questions of law will be set up) -- is antithetical to the special civil action of certiorari.

Parenthetically, it needs to be pointed out that --

1) As regards adverse judgments or final orders of an inferior court, there is only one mode of appeal (i.e., that governed by Rule 40 of the Rules, as amended), no appeal by certiorari being provided for by law, unlike in actions in the Regional Trial Court.

2) On the other hand, an appeal from a Regional Trial Court may be taken in either of two ways (as above intimated): (a) by writ of error (involving questions of fact and law)[35] and (b) by certiorari (limited only to issues of law).[36] An appeal by writ of error can only go to the Court of Appeals. And an appeal by certiorari may be brought only to the Supreme Court,[37] never to the Court of Appeals, there being no provision of law for taking appeals by certiorari to the Court of Appeals.

3) On the other hand, a special civil action of certiorari -- e.g., challenging an act of a Regional Trial Court as having been done without or in excess of jurisdiction, or with grave abuse of discretion -- may be instituted either in the Court of Appeals or the Supreme Court. If directed against an act of an inferior court, it may be filed with the proper Regional Trial Court, the Court of Appeals or the Supreme Court.

It may well happen, and not infrequently, that both remedies --- the ordinary remedy of appeal, and the extraordinary one of certiorari (as a special civil action, not a mode of appeal) -- are available to a party aggrieved by a judgment or final order of a Regional Trial Court (or of any inferior court, for that matter); that is to say, the final judgment or order appears to have been rendered without or in excess of jurisdiction, or with grave abuse of discretion. In such a situation, the availability of appeal proscribes recourse to the special civil action of certiorari.

The nature of the questions intended to be raised on appeal is of no consequence. It may well be that those questions will treat exclusively of whether or not the judgment or final order was rendered without or in excess of jurisdiction, or with grave abuse of discretion (which questions are the peculiar targets of the extraordinary writ of certiorari). This is immaterial. The remedy, to repeat, is appeal, not certiorari as a special civil action. This is specially true if other errors of fact or of law are, in addition, intended to be submitted in the appeal. If the situation presents itself in an inferior court, the remedy is appeal to the Regional Trial Court, not the filing with that Court of a special civil action of certiorari. If the situation develops in a Regional Trial Court (Court of First Instance), the remedy is an appeal to the Supreme Court by petition for review on certiorari "filed and served in the form required for petitions for review on certiorari of decisions of the Court of Appeals,"[38] i.e., in accordance with Rule 45 of the Rules.

The antithetic character of the remedies is expressed in Section 1 of Rule 65. The provision clearly and explicitly declares the rule to be that a special civil action of certiorari is proper only if "there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law." And the rule has been consistently applied in numerous cases,[39] saving only those rare instances where appeal is satisfactorily shown to be an inadequate remedy under the circumstances.

Therefore, as initially opined by respondent Judge Penaco, the choice by the petitioners of the special civil action of certiorari as a mode of review and reversal by this Court of the City Court's verdict of conviction in question -- in substitution of an ordinary appeal to the Court of First Instance (now Regional Trial Court), was in the premises wrong. The judgment of conviction not having been appealed within the time and in the manner prescribed by Rule 123 of the Rules of Court, it became final and executory upon the lapse of the reglementary appeal period. The verdict became unalterable.

Notwithstanding the foregoing established principles, however -- which would appear to provide sufficient cause for the dismissal of the instant action of certiorari -- the very special circumstances obtaining in the case make necessary the suspension of those principles to prevent a miscarriage of justice and correct a very serious error the actuality of which is conceded by virtually all the parties.[40]

It is quite evident that in the proceedings a quo, the petitioners were denied due process. Admittedly, the accused had not been notified of the continuation of the trial scheduled on March 27, 1978; this notwithstanding -- and despite the fact that when the case was called on said date, one of the accused was actually present in Court -- the

presiding Judge considered all the accused to have deliberately absented themselves, and declared the case submitted for decision; at that time, the defense still had at least one witness to present and had not yet made a formal offer of its exhibits; the decision was thereafter "prepared in haste having been rendered on April 3, 1978, or only seven (7) days from March 27, 1978, and promulgated on April 5, 1978;" and although these facts had been drawn by the petitioners to the attention of the Judge, the latter refused to grant a new trial, and instead declared the judgment of conviction final and executory and sought to have it executed. When all these admitted facts are considered conjointly with this Court's earlier finding that in no less than two (2) cases, including that which gave rise to the present certiorari action, the respondent Judge had "exhibited personal antagonism to petitioners,"[41] the need to grant relief to the petitioners appears to become all the more imperative, their erroneous choice of recourse to this Court notwithstanding.

The conclusions here reached make unnecessary the resolution of the other issues raised and discussed by the parties.

WHEREFORE, the petition is granted; the judgment rendered on April 3, 1978 by the respondent Judge and promulgated on April 5 (and 14), 1978 in Criminal Case No. 9550 is nullified and set aside, it being hereby made clear however that all evidence already presented by the prosecution and the defense in the case shall stand and not be affected by this judgment; the case is remanded to the City Court a quo for the reception of such additional evidence as the petitioners, as accused in said Criminal Case No. 9550, may wish to adduce and for such further proceedings as are appropriate and proper, including the eventual rendition and promulgation of judgment on the merits. This decision is immediately executory.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 3-11; 75 et seq

[2] Id., pp. 21-22

[3] The case was first assigned to Branch III but the presiding Judge (Ceferino Ong) inhibited himself. The case was referred by this Court to Branch II but since the presiding Judge (Ceferino Paredes) was retiring shortly, he indorsed the case to Branch I (Judge Alfonso Penaco, presiding) (Rollo, pp. 168-169)

[4] The Department of Justice denied the petition for review of the accused on February 3, 1976 (Rollo, pp. 169-170).

[5] G.R. No. L-47271

[6] Rollo, p. 128

[7] Docketed as Administrative Matter No. 5593-MC

[8] The record is bare of particulars regarding this Case No. CCI-3; it apparently involves the tearing (and disappearance) of that portion of the allegedly falsified document showing the tampering.

[9] Rollo, Adm. Matter No. 5593-MC; emphasis supplied

[10] Rollo, pp. 13-15

[11] The petition was received and recorded in this Court as UDK 3491, but failed to bring about a proceeding as very shortly thereafter, a Resolution was promulgated considering the petition as not filed.

[12] Rollo, p. 17

[13] Id., pp. 18-19

[14] Id., p. 20

[15] Id., pp. 22-37

[16] Promulgation on April 5, 1978 was only as regards Borje and Juan Lambiquit; with respect to Eugenio Lambiquit and Del Pozo, reading of the judgment in open court was done on April 14, 1978

[17] Id., pp. 38-47

[18] Id., pp. 48-54

[19] Rollo, pp. 3-11; see footnote 1, page 1, supra

[20] Id., pp. 65-77

[21] Id., p. 81

[22] Id., pp. 79-80

[23] Id., pp. 100-120: Judge Penaco's answer was filed on July 7, 1978

[24] Id., p. 136, the resolution requiring memoranda being dated August 7, 1978

[25] Id., pp. 227-228

[26] Rollo p. 230

[27] Id., p. 231

[28] Id., p. 235

[29] Id., pp. 243 et seq

[30] Id., pp. 247-250

[31] Rollo, p. 257

[32] Rollo, p. 366

[33] Id., p. 367

[34] G.R. No. L-47726: Pan Realty Corporation v. C.A., et al.

[35] Rule 41 (re civil actions) and Rule 122 (re criminal actions), Rules of Court - SEC 17 RA 296, as amended; Sec. 9, BP 129, as amended by E.O. No. 33, eff. July 28, 1986

[36] Sec. 3, R.A. 5440, eff. Sept. 9, 1968, amending Sec. 2, Rule 41 of the Rules of Court (which used to require merely that the appellant state in his notice of appeal or record on appeal that he will raise only questions of law)

[37] Except where the RTC has imposed the penalty of reclusion perpetua or life imprisonment (in which case the appeal is taken by simply filing a notice of appeal) or the death penalty (in which case there is an automatic review by the Supreme Court unless the accused himself appeals by filing a notice of appeal; although it must be noted that the 1987 Constitution now provides that the death penalty shall not be imposed).

[38] Habaluyas Enterprises, Inc. v. Japson, 142 SCRA 208; Ong v. Tating, 149 SCRA 265; Realty Sales

Enterprises, Inc., et al. v. I.A.C., G.R. No. 67451, Sept. 28, 1987

[39] *Vivo v. Reyes*, 95 SCRA 81; *Guanzon v. Montesclaros*, 124 SCRA 185; *Phil. Virginia Tobacco Administration v. Lucero*, 125 SCRA 854; *G.L. Enterprises, Inc. v. Eneris*, 111 SCRA 735; *Continental Leaf Tobacco (Phil.) Inc. v. I.A.C.*, 140 SCRA 269

[40] *Republic v. C.A.*, 107 SCRA 504, citing *Republic v. C.A., et al.*, 83 SCRA 459, in turn citing *Vda. de Ordoveza v. Raymundo*, 63 Phil. 275; *Ronquillo v. Judge Marasigan*, 5 SCRA 304; SEE *Escudero, et al. v. Judge Dulay, et al.*, G.R. No. 60578, Feb. 23, 1988

[41] SEE footnote 6, p. 2, *supra*, relative to this Court's Resolution of Nov. 14, 1978 in Adm. Matter No. 5593-MC

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