

**THE COMMISSION ON ELECTIONS AND SIXTO B. DELA VICTORIA,
PETITIONERS, VS. THE COURT OF APPEALS, THE OFFICE OF THE
SOLICITOR GENERAL, AND CONGRESSMAN CARMELO J. LOCSIN,
RESPONDENTS.**

G.R. No. 108120. January 26, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal by certiorari to set aside the Decision of the Court of Appeals in CA-G.R. SP No. 26047, ordering the dismissal of Criminal Case No. B-1588 against respondent Carmelo J. Locsin pending before the Regional Trial Court, Branch XIV, Baybay, Leyte.

I

Petitioner Sixto B. dela Victoria was a candidate at the February 1, 1988 special elections for Mayor of Albueria, Leyte. He lost the mayoralty election to Genoveva Mesina, who belonged to the same political party as respondent Camilo J. Locsin's, the duly elected Congressman of the Fourth District of Leyte.

On February 8, 1990, an information was filed by the Commission on Elections before the Regional Trial Court, Branch XIV, Baybay, Leyte (Criminal Case No. B-1588), charging respondent Locsin with violation of Section 261(f) of the Omnibus Election Code of the Philippines (B.P. Blg. 881). Respondent Locsin was accused of intimidating the members of the Municipal Board of Canvassers of Albueria, Leyte during the canvassing of election returns in said province and preventing them from performing their functions and duties.

When arraigned, respondent Locsin entered a plea of not guilty and trial commenced accordingly.

After the prosecution had rested its case, respondent Locsin filed a Demurrer to Evidence, claiming that the prosecution failed to adduce sufficient evidence to prove his guilt. The prosecution filed its Comment and Opposition thereto.

In an order dated August 9, 1991, the trial court denied the demurrer and calendared the reception of evidence for respondent Locsin.

On September 23, 1991, respondent Locsin, alleging grave abuse of discretion on the part of the trial court in denying his demurrer to evidence, filed with the Court of Appeals a petition for certiorari and prohibition to set aside the Order dated August 9, 1991 of the trial court (CA--G.R. SP No. 26047).

As ordered by the Court of Appeals, the Solicitor General filed his comment to the petition. Instead of praying for the dismissal of the petition, the Solicitor General recommended that the criminal case against respondent Locsin be dismissed since the prosecution "utterly failed to come up with even a single iota of evidence which would positively or remotely link petitioner to any coercive act charged under the Information" (Rollo, p. 85).

The Solicitor General pointed out that:

- (1) The Chairman and Secretary of the Municipal Board of Canvassers whom the prosecution claimed were the ones whose official functions were obstructed by the acts of coercion and intimidation of private respondent, denied that the latter had committed such acts of coercion and intimidation.
- (2) Petitioner Dela Victoria and his companions were able to take photographs of the canvassing, freely and without obstruction from anyone. Petitioner admitted that he and his photographer were never prevented from taking pictures of the canvassing.
- (3) The minutes of the canvassing did not indicate any untoward incident taking place.
- (4) Petitioner admitted that he saw private respondent when the latter was at the Office of the Election Register. The canvassing was done at the session hall of the municipal building.
- (5) There is no basis for the trial court's conclusion that private respondent was responsible for the presence of soldiers in the municipal building. The trial court's conclusions that private respondent had something to do with the sending of the soldiers because they arrived at the municipal building about the same time is tenuous and conjectured.
- (6) The police blotter (Exh. R) had entries stating that the soldiers were sent to the municipal building to observe the peace and order and some of the soldiers were even tasked by the COMELEC Register to perform some election chores (Rollo, pp. 85-90).

On May 7, 1992, the Court of Appeals granted the petition for certiorari, disposing as follows:

"WHEREFORE, in view of the foregoing, the Petition is hereby GRANTED dismissing Criminal Case No. B-1588 and the Order dated August 9, 1991 issued by the respondent Judge is ANNULLED without pronouncement as to costs.

SO ORDERED."

Hence, this petition.

II

The instant petition was filed by petitioners under Rule 65 of the Revised Rules of Court, alleging grave abuse of discretion amounting to lack of jurisdiction on the part of the Court of Appeals in granting the petition for certiorari. The judgment, being final and on the merits, the remedy therefrom provided by the Rules of Court is an appeal under Rule 45. However, so as to avoid dismissing the petition on a technicality, we can and we shall treat the petition as an appeal under Rule 45 (*Tesorero v. Mathay*, 185 SCRA 124 [1990]; *Marahay v. Melicor*, 181 SCRA 811 [1990]; *Elks Club v. Rovira*, 80 Phil. 272 [1948]).

Respondents Locsin and the Solicitor General separately contend: (i) that the COMELEC and petitioner Dela Victoria have no personality nor authority to file the instant petition; and (ii) that its filing places respondent Locsin in double jeopardy.

According to respondent Locsin, considering that the criminal action that was ordered dismissed by the Court of Appeals was filed in the name of the People of the Philippines, only the Solicitor General can file the instant petition.

Private respondent finds comfort from *Republic v. Partisala*, 118 SCRA 370 (1982) and *City Fiscal of Tacloban v. Espina*, 166 SCRA 614 (1988), where we held that only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People in criminal proceedings pending in this Court or

the Court of Appeals.

However, in a subsequent case, that of *People v. Calo*, 186 SCRA 620 (1990) we relaxed the rule laid down in *Partisala and Espina*, and allowed the complainant to file a petition for certiorari and prohibition to annul an order of the respondent judge, admitting the accused to bail in a murder case, without any hearing having been conducted on the bail petition. We noted that "the ends of substantial justice would be better served, and the issues in this case could be determined in a more just, speedy and inexpensive manner, by entertaining the petition at bar. As an offended party in a criminal case, private petitioner has sufficient personality and a valid grievance against Judge Adao's order granting bail to the alleged murderers of his (private respondent's) father."

In view of the peculiar circumstances of the case at bench, where the Solicitor General chose to take side with the accused in the election case being prosecuted by the COMELEC, it is but proper to extend the ruling in *Calo* to such a government agency entrusted with the prosecution of criminal cases. It is likewise appropriate to recognize its right to file special civil actions before the appellate courts in cases where the Solicitor General assumes a position antagonistic to that of said agency.

The COMELEC has sufficient interest in filing the petition to set aside the decision of the Court of Appeals having sustained the demurrer to evidence in the criminal case against private respondent for violation of the Election Laws. This is so, for it is not only entrusted with the duty to enforce the said law but also to prosecute all election offenses.

Under the Constitution, the COMELEC has the power to "prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices" (Art. IX [C], Sec. 2[6]), and under the Omnibus Election Code, (BP Blg. 881), it may avail of the assistance of other prosecution arms of the government (Sec. 265). Thus, the COMELEC Rules of Procedure gave the Chief State, Provincial and City Prosecutors a continuing authority "as deputies" to prosecute offenses punishable under the election laws (COMELEC Rules of Procedure, Part 12, Rule 34, Sec. 2).

We have allowed government agencies to handle their cases before appellate courts, to the exclusion of the Solicitor General. In *Development Bank of the Philippines v. Pundogar*, 218 SCRA 118 (1993), we held:

"Government agencies, including government corporations, must look at the Solicitor General in the first instance, to represent them in legal proceedings. However, in much the same way that the Solicitor General is not absolutely required to represent a government agency, neither is the latter absolutely compelled to avail of the Solicitor General's services. A justifiable departure from the general rule is when the agency has lost confidence in the Solicitor General, as demonstrated by its past actuations exemplified in the instant case where the DBP would rather rely on its 'in house' resources for legal services."

On their part, petitioners question the dismissal of the criminal case against respondent Locsin by the Court of Appeals.

Demurrer to evidence is governed by Section 15, Rule 119 of the 1985 Rules on Criminal Procedure, which reads as follows:

"After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; and (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution."

After the prosecution has rested its case in a criminal action, the court, *motu proprio*, or on motion of the accused with prior leave of court, may dismiss the case against the accused on the ground of insufficiency of evidence.

If the accused moves for the dismissal with prior leave of court, and the court denies the same, the accused may present evidence to substantiate his defense. If he, however, fails to secure leave of court and the demurrer to evidence is denied, he is deemed to have waived his right to present evidence and consequently submits the case for judgment on the basis of the evidence for the prosecution."

The granting of the demurrer to evidence by the court produces a different effect altogether. The case is ordered dismissed, and the order of dismissal being on the merits, is equivalent to an acquittal from which the prosecution cannot appeal, as it would place the accused in double jeopardy (*People v. City Court of Silay*, 74 SCRA 247 [1976]).

The Court of Appeals upheld the Solicitor General's recommendation to dismiss Criminal Case No. B-1588 on the ground of insufficiency of evidence.

In so doing, the Court of Appeals reviewed the evidence of the prosecution and found it insufficient to sustain a finding of guilt on the part of the accused. Hence, the Court of Appeals concluded:

"As such, when respondent Judge denied the petitioner's demurrer to evidence, he committed grave abuse of discretion for failing to consider the testimonies of the witnesses presented, thus certiorari lies against him."

Being a decision on the merits, this dismissal amounts to an acquittal of the accused from the offense charged.

We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case, this cannot now be corrected because of the timely plea of double jeopardy (*People v. Francisco*, 128 SCRA 110 [1984]; *People v. City Court of Silay*, *supra*; *City Fiscal of Cebu v. Kintanar*, 32 SCRA 601 [1970]; *People v. Nieto*, 103 Phil. 1133 [1958]).

Double jeopardy attaches when the accused, charged in a valid complaint or information before a competent court, is acquitted or convicted or the case is unconditionally dismissed without his express consent after he has been arraigned and entered a plea (1985 Rules on Criminal Procedure, Rule 117, Sec. 7; *People v. Quizada*, 160 SCRA 517 [1988]; *People v. Bocar*, 138 SCRA 166 [1985]).

Nevertheless, even if the motion to dismiss the case is made with his consent or by the accused himself, double jeopardy may be attached in two instances: (i) when the ground is insufficiency of the evidence for the prosecution, and (ii) when the proceedings have been prolonged unreasonably, in violation of the accused's right to speedy trial (*People v. Gines*, 197 SCRA 481 [1991]; *People v. Declaro*, 170 SCRA 142 [1989]; *People v. Acosta*, 25 SCRA 823 [1968]).

Petitioners claim that there was collusion between respondent Locsin and the Solicitor General as shown by the latter's act of abandoning his legal duty to defend the government and its officials before the courts.

We do not find any impropriety on the part of the Solicitor General in recommending the dismissal of the case. As the official in control of criminal cases before the appellate courts, he may abandon or discontinue the prosecution of the case in the exercise of his sound discretion (*Calderon v. Solicitor General* 215 SCRA 876 [1992]; *Gonzales v. Chavez*, 205 SCRA 816 [1992]).

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, and Kapunan, JJ., concur.

Nocon, J., on leave.

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