

MANUEL P. MARTINEZ, PETITIONER, VS. COURT OF APPEALS, THE SOLICITOR GENERAL, AND SALVADOR H. LAUREL.

G.R. No. 112387. October 13, 1994

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

This petition for review prays for the reversal of the resolutions of the Court of Appeals dated July 16, 1993 and October 25, 1993 in CA-G.R. No. 13429, entitled "The People of the Philippines, Plaintiff-Appellee, versus Manuel P. Martinez, Accused-Appellee, and Salvador H. Laurel, Private Complainant and Appellant." What petitioner Manuel P. Martinez actually seeks is the dismissal of the information for libel filed against him in the Trial Court. On the basis of the facts hereunder set forth, the Court denies his plea.

On complaint of then Vice-President Salvador H. Laurel[1], an Information dated March 23, 1990[2] was filed before the Regional Trial Court (RTC) of Manila by Assistant Prosecutor Antonio J. Ballena, charging Manuel F. Martinez with libel arising from the allegedly derogatory and scurrilous imputations and insinuations against Laurel contained in Martinez' article entitled "The Sorrows of Laurel" published on January 8, 1990 in his Manila Times column, Narrow Gate. The Information was docketed as Criminal Case No. 90-82891 and assigned to Branch XI.

Martinez filed a "Motion for Reinvestigation"[3] which was denied by Judge Manuel E. Yuzon in an Order dated June 21, 1990.[4] The case was set for arraignment and pre-trial conference on July 31, 1990, but this setting was cancelled in view of Judge Yuzon's retirement.

On October 8, 1990, complainant Laurel filed a motion to set the case for arraignment and pre-trial. Action on the motion was held in abeyance by the pairing judge, Hon. Gerardo Pepito, pending assumption of duty of Judge Yuzon's successor.

In the meantime, Martinez filed a petition with the Department of Justice (DOJ) seeking review of the resolution of the City Prosecutor finding a prima facie case of libel against him. Accordingly, 3rd Asst. City Prosecutor Lourdes C. Tabanag filed before the trial court on October 26, 1990, a motion to suspend proceedings pending resolution by the DOJ of Martinez' petition for review, which was granted by Judge Pepito on November 6, 1990.

On February 6, 1991, complainant Laurel attempted once more to have the case set for arraignment and trial. No action was taken on his said motion, and a subsequent motion dated July 16, 1991 praying for the resolution of the February 6, 1991 motion met the same fate.

By letter dated August 16, 1991 addressed to the City Prosecutor of Manila,[5] then Acting Justice Secretary Silvestre H. Bello III declared inter alia that while the language used in the article may be unsavory and unpleasant to complainant, the same was not actionable as libel, as it embodied merely an opinion protected as a privileged communication under Article 354 of the Revised Penal Code. The appealed resolution was therefore set aside and the City Prosecutor was directed to cause the dismissal of the information filed against Manuel F.

Martinez. Consequently, a motion to dismiss Criminal Case No. 90-82891 was filed on August 26, 1991 and set for hearing on December 17, 1991. At the hearing, upon manifestation of complainant's counsel, as private prosecutor, that he had received no copy of the motion to dismiss, the trial court directed the case prosecutor to furnish said counsel the desired copy, giving the latter ten (10) days to respond thereto.

It does not appear that the case prosecutor complied with the trial court's order; this notwithstanding, said court, through Presiding Judge Roberto A. Barrios, issued on February 18, 1992 an Order[6] reading:

"Before arraignment was had, the Department of Justice conducted & since concluded review and reinvestigation of the charges, the Resolution of which is Annex "A" of the prosecution's motion to dismiss. The prosecution's fresh stand is that "there is no sufficient evidence against the said accused to sustain the allegation in the information." Coming as it does from the officials having control of the prosecution and at this stage of the proceedings, and there being no objection, the motion to dismiss is granted.

WHEREFORE, the case is dismissed. The office/officer having custody of it is directed to forthwith release to the accused his cash bond submitted under O.R No. 46865.

SO ORDERED."

Complainant Laurel having sought and been denied a reconsideration of said Order, he went to the Court of Appeals, ascribing error to the lower court in (a) recognizing the regularity and validity of the petition for review filed by Martinez with the DOJ and the DOJ's giving due course thereto, and (b) granting the motion to dismiss despite absence of notice thereof to complainant Laurel, and basing said dismissal not on evidence on record but on the opinion of the Secretary of Justice, to whom the judge completely subordinated his judgment and whose opinion, on its face, was clearly puerile and flimsy and violated or disregarded numerous Supreme Court decisions.

Martinez, on his part, moved to dismiss the appeal on the ground that no appeal lies from the dismissal of a criminal case, and certainly not by the private complainant, particularly where dismissal was at the instance of the City Prosecutor upon orders of the Department of Justice. He contended that if any remedy was available to private complainant, it was a petition for certiorari, not an appeal. Said motion notwithstanding, the Court of Appeals ordered complainant to file his brief. For its part, the Office of the Solicitor General filed a Manifestation in Lieu of Appellee's Brief recommending that the Order dated February 18, 1992 of the lower court granting the prosecution's motion to dismiss, be set aside and the case remanded to the court a quo for further proceedings.

On July 16, 1993, the Court of Appeals, Sixth Division, issued a Resolution[7] granting the appeal and remanding the case for arraignment of the accused and trial on the merits. The Appellate Court ruled that private complainant had "sufficient personality and a valid grievance against the order of dismissal before arraignment" and that the remedy of appeal was properly available because the order of dismissal was a final order which terminated all proceedings in the case. Quoting extensively from the People's Manifestation, the Court found the review by then Acting Justice Secretary Bello to run counter to prevailing jurisprudence and DOJ Circulars. It further ruled that the trial court completely abdicated its jurisdiction in favor of the Justice Department when it dismissed the case on the mere say-so of the prosecutor, without requiring the latter to present evidence to enable the court to arrive at its own judgment.

Martinez sought, but failed to obtain, a reconsideration of the above Resolution.[8] Hence, the present recourse. His arguments in support thereof do not warrant reversal of the challenged judgment of the Court of Appeals.

Appeal against the order of dismissal of February 18, 1992 was not foreclosed by the rule of double jeopardy, said order having issued before arraignment. Legal jeopardy attaches only (a) upon a valid indictment, (b) before a

competent court, (c) after arraignment, (d) a valid plea having been entered, and (e) the case was dismissed or otherwise terminated without the express consent of the accused.[9]

Under Section 2, Rule 122 of the 1988 Rules of Criminal Procedure, the right to appeal from a final judgment or order in a criminal case is granted to "any party", except when the accused is placed thereby in double jeopardy.[10]

In *People vs. Guido*,[11] this Court ruled that the word "party" must be understood to mean not only the government and the accused but also other persons who may be affected by the judgment rendered in the criminal proceeding. Thus, the party injured by the crime has been held to have the right to appeal from a resolution of the court which is derogatory to his right to demand civil liability arising from the offense.[12] The right of the offended party to file a special civil action of prohibition and certiorari from an order rendered in a criminal case was likewise recognized in the cases of *Paredes vs. Gopengco*[13] and *People vs. Calo, Jr.*[14], which held that "offended parties in criminal cases have sufficient interest and personality as 'person(s) aggrieved' to file the special civil action of prohibition and certiorari under Sections 1 and 2 of Rule 65 in line with the underlying spirit of the liberal construction of the Rules of Court in order to promote their object * * *." [15]

In *People vs. Nano*[16], the Court, while declaring the petition filed before it by the private counsel for the offended parties to be defective in form, nevertheless took cognizance thereof in view of the gravity of error allegedly committed by the respondent judge against the prosecution -- denial of due process -- as well as the manifestation and motion filed by the Office of the Solicitor General praying that the petition be treated as if filed by the said office. The same exceptional circumstances obtaining in the *Nano* case justified the Court of Appeals' taking cognizance of the appeal filed by private complainant Laurel, i.e.: denial of due process consisting in the failure of the prosecution to furnish counsel for private complainant a copy of the motion to dismiss despite being ordered to do so, as well as of the Manifestation in Lieu of Appellee's Brief[17] filed by the Solicitor General in the appellate court, recommending the setting aside of the Order of the lower court dated February 18, 1992 and the remand of the case to the court a quo for further proceedings.

It is not unusual for the Solicitor General to take a position adverse to the People or the prosecution. The reason, as explained by the Court in *Orbos vs. Civil Service Commission*[18], is that as the lawyer of the government, its agencies and instrumentalities, the Solicitor General has the duty to "see to it that the best interest of the government is upheld within the limits set by law. * * * It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position." When that happens, as the Court observed in *Orbos*:

"*** the Solicitor General nevertheless manifests his opinion and recommendation to the Court which is an invaluable aid in the disposition of the case. On some occasions he begs leave to be excused from intervening in the case, more so, when the client had already filed its own comment different from the stand of the Solicitor General or in a situation when he finds the contention of a private party tenable as against that of the government or any of its agencies. The Solicitor General has recommended the acquittal of the accused in appealed criminal cases."

The procedural recourse of appeal taken by private complainant Laurel is correct because the order of dismissal was a final order. It finally disposed of the pending action so that nothing more could be done with it in the lower court.[19] In *Bell Carpets International Trading Corp. vs. Court of Appeals*,[20] this Court held that "(t)he remedy against such a judgment is an appeal, regardless of the questions sought to be raised on appeal, whether of fact, or of law, whether involving jurisdiction or grave abuse of discretion of the Trial Court. * * * (T)he party aggrieved * * * did not have the option to substitute the special civil action of certiorari under Rule 65 for the remedy of appeal provided for in Rule 41. Indeed, the existence and availability of the right of appeal are antithetical to the

availment of the special civil action of certiorari."

The rule with respect to the disposition of motions to dismiss filed by the fiscal was laid down by the Court in *Crespo vs. Mogul*,^[21] where it was held that:

"The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation."

Petitioner maintains that it is precisely in recognition of the above-cited rule that the prosecutor left the disposition of the case to the discretion of the lower court by filing the appropriate motion to dismiss; and that it was neither the Justice Secretary nor the fiscal who dismissed the information, but the trial judge himself, who exercised his discretion by approving the stand taken by the prosecution.

The fault or error tainting the order of dismissal of the lower court consists in its failure to observe procedural due process and to exercise its discretion properly and judiciously. Other procedural lapses that must be pointed out are attributable to petitioner Martinez, who filed a petition for review with the Department of Justice despite the denial by Judge Yuzon of his motion for reinvestigation, and to the Justice Secretary, who took cognizance of the petition for review despite the fact that an information had been filed in court. But that is water under the bridge.

What now concerns the Court here with is how the trial judge acted in relation to the motion to dismiss. First, he granted the same without the prosecution having furnished private complainant a copy of the motion despite having been ordered to do so, thereby effectively depriving private complainant of his day in court.

Secondly, the dismissal was based merely on the findings of the Acting Secretary of Justice that no libel was committed. The trial judge did not make an independent evaluation or assessment of the merits of the case. Reliance was placed solely on the conclusion of the prosecution that "there is no sufficient evidence against the said accused to sustain the allegation in the information" and on the supposed lack of objection to the motion to dismiss, this last premise being, however, questionable, the prosecution having failed, as observed, to give private complainant a copy of the motion to dismiss.

In other words, the grant of the motion to dismiss was based upon considerations other than the judge's own personal individual conviction that there was no case against the accused. Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

As aptly observed by the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in *Crespo v. Mogul*.^[22]

The dismissal order having been issued in violation of private complainant's right to due process as well as upon an erroneous exercise of judicial discretion, the Court of Appeals did not err in setting aside said dismissal order and remanding the case to the trial court for arraignment of petitioner as accused therein and for further proceedings.

WHEREFORE, the petition is DENIED. The assailed resolutions of the Court of Appeals are affirmed. Costs against petitioner.

SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.
Padilla, J., took no part in deliberations.

[1] Annex "A", Petition, Rollo, pp. 19-23.

[2] Annex "B", Petition, Rollo, pp. 24-25.

[3] Annex "2", Motion to Dismiss of Private Respondent, Rollo, pp. 125-128.

[4] Annex "2-A", Ibid., Id., p. 130.

[5] Annex "C", Petition, Rollo, pp. 26-31.

[6] Annex "D", Petition, Rollo, p. 33.

[7] Annex "H", Petition, pp. 77-86, Rollo. Penned by Associate Justice Nathanael P. de Pano, Jr. and concurred in by Associate Justices Asaali S. Isnani and Lourdes K. Tayao-Jaguros.

[8] His motion for reconsideration was denied for lack of merit in a resolution dated October 25, 1993.

[9] Lamera vs. Court of Appeals, 198 SCRA 186

[10] Section 2, Rule 122 of the 1988 Rules of Criminal Procedure reads: "Who may appeal.- Any party may appeal from a final judgment or order, except if the accused would be placed thereby in double jeopardy.

[11] 57 Phil. 52, 53

[12] Gonzales vs. Judge of Court of First Instance of Bulacan, et al., G.R. No. 45233, V L.J. 170, cited in Francisco, The Revised Rules of Court in the Philippines, Second Edition, 1969, p. 883.

[13] 29 SCRA 688 (1969)

[14] 186 SCRA 620

[15] Ibid., at p. 624. See also Calderon vs. Solicitor General, 215 SCRA 876.

[16] 205 SCRA 155

[17] Annex "G", Petition, pp. 58-75, Rollo.

[18] 189 SCRA 459

[19] De Ocampo vs. Republic of the Philippines, G.R. No. L-19533, October 31, 1963, 9 SCRA 440

[20] 185 SCRA 35, emphasis in the original.

[21] 151 SCRA 462

[22] Comment, pp. 166-167, Rollo.

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