

PAZ T. BERNARDO, PETITIONER, VS. COURT OF APPEALS, HON. OSCAR L. LEVISTE AND FLORITA RONQUILLO-CONCEPCION, RESPONDENTS.*G.R. No. 119010. September 05, 1997*

Ponente: BELLOSILLO, J.

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For an orderly procedure in the disposition of criminal cases the Rules of Court provides that the prosecution and the defense present their evidence in the order prescribed in Sec. 3, Rule 119, after which, evaluating the evidence presented, the trial court renders judgment either of acquittal or conviction. Under Sec. 15 of the same Rule, after the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence either on its own initiative after giving the prosecution an opportunity to be heard, or on motion of the accused filed with prior leave of court. If the court denies the demurrer or motion to dismiss, 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.

The new rule on demurrer to evidence was first incorporated in the 1985 Rules on Criminal Procedure which significantly changed the ruling in *People v. Mamacol*[1] and *Abriol v. Homeres*[2] that when a motion to dismiss on insufficiency of evidence is denied the accused has a right to present evidence in his behalf. Earlier the rule was, when after the prosecution has rested its case, and the accused files a motion to dismiss on insufficiency of evidence, he waives the right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution.[3] The rule was further modified in 1988 to the effect that only when the accused files a demurrer or motion to dismiss on insufficiency of evidence without express leave of court that the accused may be deemed to have waived his right to present evidence and the case considered submitted for decision on the basis of the evidence for the prosecution. If the accused has obtained prior leave of court, in case of denial of his motion to dismiss, he retains his right to present evidence in his behalf. The court may also *motu proprio* dismiss the case on insufficiency of evidence, but before doing so, it should give the prosecution an opportunity to be heard and to oppose the motion.[4]

We are now called upon to apply the new rule on demurrer to evidence.

Paz T. Bernardo was originally charged with four (4) counts of violation of B.P. Blg. 22 before the Regional Trial Court of Quezon City, docketed as Crim. Cases Nos. Q-93-46792-95. Subsequently, private complainant, respondent Florlita Ronquillo-Concepcion, executed an Affidavit of Desistance which led to the dismissal of Crim. Cases Nos. Q-93-46794 and Q-93-46795, thus leaving Crim. Cases Nos. Q-93-46792 and Q-93-46793 to be disposed of by the trial court.

On 20 May 1994, after presenting its last witness, the prosecution rested its case and formally offered its exhibits. That hearing was set at 8:30 a.m. on that date for continuation of the reception of the evidence for the prosecution

as reflected in the calendar of the court. [5] After the prosecution had formally offered its evidence, the following transpired in open court -

COURT:

Alright, prosecution having rested, defense will now present its evidence. Proceed.

ATTY. MIRAVITE:

Your honor, we respectfully ask for a resetting, for leave of court to file demurrer to evidence (underscoring supplied).

COURT:

On what ground?

ATTY. MIRAVITE:

On the ground that the prosecution failed to elicit the fact where the checks were issued and where they were actually dishonored. This is material, your honor, for purposes of determining jurisdiction. Also, your honor, as we mentioned in our comments to the evidence presented by the prosecution, there has been no valid notice of dishonor of the subject checks upon the accused. So, upon those grounds, we believe that the prosecution has not duly made out a case against the accused, and we feel those are sufficient for the dismissal of the case as against the accused.

COURT:

So as to avoid reviewing the records, would you admit that there is no proof where the checks were issued and where they were dishonored?

PRIVATE PROSECUTOR:

No, we would not admit that, your honor. They were dishonored actually in Manila, but the check was deposited in the bank of PAR CREDIT ENTERPRISES in Quezon City, and it was naturally forwarded to the Philippine National Bank where the same was returned to the bank of PAR CREDIT ENTERPRISES here in Quezon City.

COURT:

Where does it appear?

PRIVATE PROSECUTOR:

It is at the back of Exhibit A, your honor.

COURT:

Is it mark(ed)?

PRIVATE PROSECUTOR:

Your honor, it states here, deposited to Philippine National Bank, West Avenue, Quezon City which is at the check marked as exhibit A-4.

COURT:

So, that takes jurisprudence. The elements happened in Quezon City.

PRIVATE PROSECUTOR:

Yes, your honor.

ATTY. MIRAVITE:

The notation read by counsel, your honor, was not marked in evidence, what was marked is B-4 appearing at the dorsal portion of the check which pertains only for (sic) the dishonor, the initial and the date. Nothing was presented as to the fact. If that is so, that was indeed deposited at West Avenue, Quezon City.

PRIVATE PROSECUTOR:

There is, your honor. The stamp received by the Cashier Division, PNB, Quezon City, West Avenue.

COURT:

Anyway, was there an offer of that document?

PRIVATE PROSECUTOR:

Yes, there was an offer of exhibit A-4, your honor. The record would show that we manifested that exhibit B-4 are stamps of the bank reading DAIF over which there are other stamps.

COURT:

You are saying that the word DAIF was marked at the back and offered as proof of the dishonor and the place was evidence?

PRIVATE PROSECUTOR:

Yes, your honor, immediately on top of the word, DAIF.

COURT:

Is there any evidence testimonial that these were encashed and dishonored?

PRIVATE PROSECUTOR:

Yes, your honor, the testimony of this witness is very clear that the checks were deposited and the same was (sic) dishonored by the bank.

COURT:

Do you admit that there was no notice of dishonor?

PRIVATE PROSECUTOR:

We don't admit that, your honor. In fact, there are admissions in handwriting regarding the claim.

COURT:

Is there any evidence presented that these checks were not paid up to now?

PRIVATE PROSECUTOR:

Yes, your honor. First, is the oral testimony of the witness, that it has not been paid; second, exhibits 1 and 1-1, which is the Complaint Affidavit of the witness.

COURT:

Alright, in view of the objections, and in view of the manifestations of the private prosecutor, the defense grounds for demurrer, the same not being well taken is hereby DENIED (underscoring supplied). You will now

present your evidence.

ATTY. MIRAVITE:

If your honor please, may we just ask for a reconsideration (underscoring supplied)?

COURT:

If you will waive your right to present your evidence, the Court will give you a period to file a demurrer to evidence. And, if you don't present your evidence now, you will be considered to have waived your right to present evidence (underscoring supplied).

xxxx

ATTY. MIRAVITE:

If your honor please, we would like to reiterate our motion to file a demurrer to evidence (underscoring supplied)?

COURT:

But you have already orally made that demurrer which has been denied (underscoring supplied).

ATTY. MIRAVITE:

In which case your honor, if there is no leave of court, we will be filing our demurrer to evidence, your honor (underscoring supplied).

COURT:

That is tantamount to postpone (sic) this case. The Court considers that motion dilatory (underscoring supplied).

ATTY. MIRAVITE:

Your honor, I think within the option of the parties to take remedies and at this point, we did prepare for our purposes, that instead of presenting the accused or presenting our witnesses, we would just prefer to move for a demurrer to evidence (underscoring supplied).

COURT:

You may include that in your motion for reconsideration. Alright, the prosecution having rested, and the defense having been considered to have waived his right to present his evidence, this case is deemed submitted for decision. Set the promulgation of this case to June 6, 1994 at 8:30 o'clock in the morning (underscoring supplied). [6]

Petitioner assailed the Order of respondent judge hereinbefore immediately quoted before the Court of Appeals by way of certiorari, prohibition and mandamus. Petitioner argued that the trial court committed grave abuse of discretion in considering her to have waived her right to present evidence after the denial of her motion for leave to file demurrer to evidence.

On 30 September 1994 the Court of Appeals rendered a decision modifying in effect that portion of the questioned Order of the RTC-Br. 97, Quezon City, of 20 May 1994 which states that "the defense having been considered to have waived her right to present her evidence, this case is deemed submitted for decision"[7] by directing the trial court to set Crim. Cases Nos. Q-93-46792 and Q-93-46793[8] "for trial for reception of evidence for the petitioner." [9] Petitioner moved for partial reconsideration of the decision of the Court of

Appeals but her motion was denied on 7 February 1995.

Petitioner Bernardo filed the instant petition for review on certiorari of the decision of the Court of Appeals on the ground that when it refused to allow petitioner to demur to the evidence the appellate court decided the matter not in accordance with law and applicable decisions of this Court.[10] Petitioner submits that when her counsel moved for leave to file a demurrer to evidence on 20 May 1994 this meant that she intended to make a written demurrer after extensive research and with proper authorities to support the same; that when the trial court denied her motion, it was in effect a denial only of the motion for leave to file demurrer to evidence and not the demurrer to evidence itself and, therefore, the order of respondent appellate court allowing petitioner to present her evidence was premature. Petitioner further contends that she should first be given the opportunity to file her demurrer to evidence and wait for its denial with finality before she could be directed to present her evidence before the trial court.[11]

We cannot sustain petitioner. As the trial court observed, her move, expressed through counsel, was merely "dilatatory." [12] But neither can we affirm the ruling of respondent Court of Appeals directing the trial court to receive the evidence of the defense after its motion for leave to file a demurrer to evidence was denied. It is contrary to the letter and spirit of Sec. 15, Rule 119, of the Rules of Court.

The implications and consequences of obtaining prior leave before the accused files a demurrer to evidence were discussed by the Committee on the Revision of the Rules as reflected in its Minutes of 18 February 1997. Mr. Justice Jose Y. Feria, Co-Chairman of the Committee, explained -

Objections were raised against the new Rule on the ground that it was prejudicial to the accused. Hence, the present amended provision was adopted. It is only when the accused files such a motion to dismiss without express leave of court that he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution x x x x [13]

Chief Justice Andres R. Narvasa, Chairman of the Committee, suggested that -

x x x there may be instances where it is very plain that the evidence is insufficient, but there are also instances where the court is in doubt x x x x it is the court that will now determine whether a demurrer should be filed or not after getting the opinion of both sides x x x x If the accused asks for leave of court and the court supports it, it is good; but x x x if it finds the motion dilatory, then it denies it. But x x x there should be no waiver if the demurrer is with leave of court, because there may be a situation where the court itself may want to dismiss the case x x x x If leave is denied, and the accused still files the demurrer, then there is waiver (underscoring supplied). [14]

The Committee finally approved the following propositions of the Chief Justice: (a) The court on its initiative can dismiss the case after giving prior notice to the prosecution; (b) The accused can file a demurrer only if he is granted prior leave of court; (c) If the motion for leave or the demurrer is denied, the accused can present his evidence, and there is no waiver; and, (d) If the accused files a demurrer without leave, his right to present evidence is waived.[15]

In fine, under the new rule on demurrer to evidence the accused has the right to file a demurrer to evidence after the prosecution has rested its case. If the accused obtained prior leave of court before filing his demurrer, he can still present evidence if his demurrer is denied. However, if he demurs without prior leave of court, or after his motion for leave is denied, he waives his right to present evidence and submits the case for decision on the basis of the evidence for the prosecution. This power to grant leave to the accused to file a demurrer is addressed to the sound discretion of the trial court. The purpose is to determine whether the accused in filing his demurrer is merely stalling the proceedings.[16]

In the case at bar, petitioner admits that in the hearing of 20 May 1994 the trial court denied her motion for leave to file a demurrer to evidence. In such case, the only right petitioner has under Sec. 15, Rule 119, of the Rules of Court after having been denied leave to submit a demurrer is to adduce evidence in her defense. However, even without express leave of the trial court, nay, after her motion for leave was denied, petitioner insisted on filing a demurrer instead of presenting evidence in her defense.

Judicial action to grant prior leave to file demurrer to evidence is discretionary upon the trial court. But to allow the accused to present evidence after he was denied prior leave to file demurrer is not discretionary. Once prior leave is denied and the accused still files his demurrer to evidence or motion to dismiss, the court no longer has discretion to allow the accused to present evidence. The only recourse left for the court is to decide the case on the basis of the evidence presented by the prosecution. And, unless there is grave abuse thereof amounting to lack or excess of jurisdiction, which is not present in the instant case, the trial court's denial of prior leave to file demurrer to evidence or motion to dismiss may not be disturbed.^[17] However, any judgment of conviction by a trial court may still be elevated by the accused to the appellate court.^[18]

WHEREFORE, the Petition to allow petitioner to file a demurrer to evidence is DENIED. The ruling of respondent Court of Appeals directing the trial court to hear the evidence of the accused is SET ASIDE. The Regional Trial Court of Quezon City is directed to decide the remaining Crim. Cases Nos. Q-93-46792 and Q-93-46793 on the basis of the evidence already presented by the prosecution.

SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] 81 Phil. 543 (1948).

[2] 84 Phil. 525 (1949).

[3] *Ocampo v. Court of Appeals*, G.R. No. 79060, 8 December 1989, 180 SCRA 27.

[4] *Herrera, Oscar M., Remedial Law*, Vol. IV, Rules 110-127, 1995 Ed., pp. 510-511.

[5] *Rollo*, p. 36.

[6] *TSN*, 20 May 1994, pp. 16-21.

[7] *Rollo*, pp. 29-40.

[8] *Not Crim. Cases No. Q-93-47465-67*; see *Records of the RTC-Br. 97, Quezon City*, p. 60.

[9] *Decision of respondent Court of Appeals in CA-G.R. SP No. 34219*, 30 September 1994, p. 12; *Rollo*, p. 40.

[10] *Rollo*, p. 20.

[11] *Id.*, pp. 20-26.

[12] See Note 6.

[13] *Gupit, Fortunato, Jr., The 1988 Amendments to the Rules on Criminal Procedure*, 1989 Ed., p. 87, citing *Feria, 1988 Amendments to the 1985 Rules on Criminal Procedure*, *Philippine Legal Studies*, Series No. 3, p. 28.

[14] *Gupit, op. cit.*, pp. 88-89.

[15] *Gupit, op. cit.*, pp. 2-3.

[16] *People v. Mahinay*, G.R. No. 109613, 17 July 1995, 246 SCRA 451, 457.

[17] People v. Mercado, No. L- 33492, 30 March 1988, 159 SCRA 453.

[18] Cruz v. People, G.R. No. 67228, 9 October 1986, 144 SCRA 677.

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