

LETICIA R. MERCIALES, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES, JOSELITO NUADA, PAT. EDWIN MORAL, ADONIS NIEVES, ERNESTO LOBETE, DOMIL GRAGE...

G.R. No. 124171. March 18, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner seeks the reversal of the Decision of the Court of Appeals[1] in CA-G.R. SP No. 37341, denying her petition to annul the Order of the Regional Trial Court of Legazpi City, Branch 8,[2] in Criminal Case Nos. 6307-6312, which dismissed the charge of rape with homicide based on a demurrer to evidence filed by private respondents, accused therein.

The antecedent facts as succinctly synthesized by the respondent court are as follows:

On August 12, 1993, Criminal Case Nos. 6307, 6308, 6309, 6310, 6311, and 6312, for rape with homicide, in connection with the death of one Maritess Ricafort Merciales, were filed against the private respondents, Joselito Nuada, Pat. Edwin Moral, Adonis Nieves, Ernesto Lobete, Domil Grageda and Ramon "Pol" Flores, before the Regional Trial Court, Fifth Judicial Region, Legaspi City. The said cases were consolidated in Branch 8, presided over by the respondent judge.

During the trial, after presenting seven witnesses, the public prosecutor filed a motion for the discharge of accused Joselito Nuada, in order that he may be utilized as a state witness. However, the prosecution contended that it was not required to present evidence to warrant the discharge of accused Nuada, since the latter had already been admitted into the Witness Protection Program of the Department of Justice. Consequently, the respondent judge denied the motion for discharge, for failure of the prosecution to present evidence as provided for by Section 9, Rule 119 of the 1985 Rules on Criminal Procedure.

On December 22, 1993, the prosecution filed a petition[3] for certiorari [G.R. No. 113273-78] before the Supreme Court, questioning the respondent judge's denial of the motion to discharge the accused Nuada. Despite the fact that the petition did not contain a prayer for a temporary restraining order, the trial judge did not set the case for further hearing so as to give the prosecution time to secure such temporary restraining order from the Supreme Court.

On July 13, 1994, herein private respondents filed a motion to set the case for hearing, invoking their constitutional right to speedy trial. The respondent judge granted the motion, and set the case for hearing on July 29, 1994.

On the said date, the prosecution filed a motion for reconsideration, instead of presenting further evidence. The respondent Judge postponed the hearing and reset the same for August 9, 1994.

On August 9, 1994, again the prosecution filed a motion for reconsideration, invoking its pending petition for certiorari with the Supreme Court. The private respondents, thru counsel, objected to any further resetting as

this would constitute a violation of their right to a speedy trial. The respondent judge called for a recess so as to let the prosecution decide whether or not to present an NBI agent, who was then present, to prove the due execution of the accused Nuada's extrajudicial confession.

However, after the recess, the public prosecutor declined to present the NBI agent, and instead manifested that he was not presenting any further evidence. The defense then moved that the cases be deemed submitted for decision, and asked leave of court to file a demurrer to evidence.

On August 29, 1994, the Solicitor General filed [in G.R. No. 113273-78] a motion for issuance of a writ of preliminary injunction or temporary restraining order with the Supreme Court, to enjoin the respondent judge from proceeding with the resolution of the case. However, on September 19, 1994, the motion was denied by the Supreme Court.

In due time, the accused filed their demurrer to evidence x x x.[4]

On October 21, 1994, the trial court issued the assailed Order, the dispositive portion of which reads:

For lack of sufficient evidence to prove the guilt of the accused beyond reasonable doubt, all the accused in all these cases are hereby ACQUITTED and the cases filed against them are hereby DISMISSED. The accused in all these cases, being detention prisoners, are hereby ordered RELEASED from detention, unless they are being detained for some other legal cause.

SO ORDERED.[5]

Petitioner Leticia Merciales, who is the mother of the victim in the said criminal cases, filed before the respondent Court of Appeals a petition to annul the foregoing Order of the trial court. However, the Court of Appeals dismissed the petition on October 4, 1995.

A motion for reconsideration was denied on March 6, 1996. Hence, the instant petition based on the ground that:

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT REFUSED TO NULLIFY THE ORDER DATED OCTOBER 21, 1994 OF THE TRIAL COURT FOR BEING NULL AND VOID ON THE GROUND THAT THE TRIAL JUDGE TOLERATED AND/OR COMMITTED INJUSTICE BY FAILING TO REQUIRE THE PROSECUTION TO PRESENT ALL THEIR EVIDENCE INSTEAD OF SUPPRESSING THEM APPARENTLY TO FAVOR THE ACCUSED IN VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE PEOPLE TO DUE PROCESS, OUSTING THE TRIAL COURT OF ITS JURISDICTION.[6]

The case was set for oral argument on December 11, 2001. Counsel for petitioner and the Solicitor General appeared. During the oral argument, the Solicitor General manifested that he was joining the cause of petitioner in order to prevent a miscarriage of justice. The Court directed the parties to submit their respective memoranda in amplification of the points raised during the oral argument.

Petitioner maintains that the reopening of the criminal case will not violate the accused's right to double jeopardy. More particularly, she ascribes prosecutorial and judicial misconduct in the undue haste which attended the prosecution's premature resting and the trial court's grant of the demurrer to evidence when the presentation of the evidence for the prosecution has not been completed.

Private respondent Ramon Flores filed his Memorandum, arguing that petitioner, being the private complainant in the criminal case below, has no legal standing to appeal the acquittal of private respondents; that there was no extrinsic fraud, abuse of discretion or jurisdictional defect to warrant either a petition for annulment of judgment or certiorari; and that the reopening of the criminal case will violate the accused's right against double jeopardy.

It is true that a private complainant cannot bring an action questioning a judgment of acquittal, except insofar as

the civil aspect of the criminal case is concerned.[7] In the case at bar, we agree with petitioner that this issue was rendered moot when the Solicitor General, in representation of the People, changed his position and joined the cause of petitioner, thus fulfilling the requirement that all criminal actions shall be prosecuted under the direction and control of the public prosecutor.[8]

In any event, petitioner has an interest in the maintenance of the criminal prosecution, being the mother of the deceased rape victim. The right of offended parties to appeal an order of the trial court which deprives them of due process has always been recognized, the only limitation being that they cannot appeal any adverse ruling if to do so would place the accused in double jeopardy.[9]

The criminal case below was for rape with homicide. Although the public prosecutor presented seven witnesses, none of these actually saw the commission of the crime. It was only Joselito Nuada, one of the accused, who came forward and expressed willingness to turn state witness. His testimony was vital for the prosecution, as it would provide the only eyewitness account of the accused's complicity in the crime. The trial court required the public prosecutor to present evidence to justify Nuada's discharge as a state witness, but the latter insisted that there was no need for such proof since Nuada had already been admitted into the Witness Protection Program of the Department of Justice. The public prosecutor's obstinate refusal to present the required evidence prompted the trial court to deny the motion to discharge Nuada.

The prosecution elevated the matter to the Supreme Court on a petition for certiorari. Meanwhile, the accused moved to set the case for hearing, invoking their constitutional right to speedy trial. The trial court granted the motion. The public prosecutor moved for a continuance, and the trial court acceded. At the next scheduled hearing, however, the trial court denied a similar motion by the prosecution in view of the objection of the accused. The trial court directed the public prosecutor to present Atty. Carlos S. Caabay, the NBI Agent who took Nuada's extrajudicial confession. At the resumption of the hearing, the public prosecutor declared that he was resting the prosecution's case, knowing fully well that the evidence he has presented was not sufficient to convict the accused. Consequently, the ensuing demurrer to evidence filed by the accused was granted by the trial court.

It is clear from the foregoing that the public prosecutor was guilty of serious nonfeasance. It is the duty of the public prosecutor to bring the criminal proceedings for the punishment of the guilty.[10] Concomitant with this is the duty to pursue the prosecution of a criminal action and to represent the public interest. A crime is an offense against the State, and hence is prosecuted in the name of the People of the Philippines. For this reason, Section 5 of Rule 110 provides that "all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal x x x." As the representative of the State, the public prosecutor has the right and the duty to take all steps to protect the rights of the People in the trial of an accused.[11] If the public prosecutor commits a nonfeasance in refusing to perform a specific duty imposed on him by law, he can be compelled by an action for mandamus.[12]

In the case at bar, the public prosecutor knew that he had not presented sufficient evidence to convict the accused. Yet, despite repeated moves by the accused for the trial court to continue hearing the case, he deliberately failed to present an available witness and thereby allowed the court to declare that the prosecution has rested its case. In this sense, he was remiss in his duty to protect the interest of the offended parties. More specifically, the public prosecutor in this case was guilty of blatant error and abuse of discretion, thereby causing prejudice to the offended party. Indeed, the family of the deceased victim, Maritess Merciales, could do nothing during the proceedings, having entrusted the conduct of the case in the hands of the said prosecutor. All they could do was helplessly watch as the public prosecutor, who was under legal obligation to pursue the action on their behalf, renege on that obligation and refuse to perform his sworn duty.

Indeed, Rule 119, Section 9 (now Section 17) of the Rules of Court expressly requires the presentation of evidence in support of the prosecution's prayer for the discharge of an accused to be a state witness, viz:

When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, xxx xxx xxx.

By refusing to comply with the trial court's order to present evidence, the public prosecutor grossly violated the above-quoted rule. Moreover, the public prosecutor violated his bounden duty to protect the interest of the offended party, at least insofar as the criminal aspect is concerned. After the trial court denied his motion to discharge Nuada as a state witness, he should have proceeded to complete the evidence of the prosecution by other means. Instead, he willfully and deliberately refused to present an available witness, i.e., the NBI Agent who was present in court on that date and time. The public prosecutor was duty-bound to exhaust all available proofs to establish the guilt of the accused and bring them to justice for their offense against the injured party.

Likewise guilty for serious nonfeasance was the trial court. Notwithstanding its knowledge that the evidence for the prosecution was insufficient to convict, especially after the public prosecutor tenaciously insisted on utilizing Nuada as state witness, the trial court passively watched as the public prosecutor bungled the case. The trial court was well aware of the nature of the testimonies of the seven prosecution witnesses that have so far been presented. Given this circumstance, the trial court, *motu proprio*, should have called additional witnesses for the purpose of questioning them himself in order to satisfy his mind with reference to particular facts or issues involved in the case.[13]

Based on the foregoing, it is evident that petitioner was deprived of her day in court. Indeed, it is not only the State, but more so the offended party, that is entitled to due process in criminal cases. Inasmuch as the acquittal of the accused by the court *a quo* was done without regard to due process of law, the same is null and void. It is as if there was no acquittal at all, and the same cannot constitute a claim for double jeopardy.[14]

By contending that the challenged Decision is void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, the petition does not violate the right of the accused against double jeopardy. It is elementary that double jeopardy attaches only when the following elements concur: (1) the accused are charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused have been arraigned and have pleaded; and (4) they are convicted or acquitted, or the case is dismissed without their consent.

Thus, even assuming that a writ of certiorari is granted, the accused would not be placed in double jeopardy because, from the very beginning, the lower tribunal had acted without jurisdiction. Precisely, any ruling issued without jurisdiction is, in legal contemplation, necessarily null and void and does not exist.[15]

Otherwise put, the dismissal of the case below was invalid for lack of a fundamental prerequisite, that is, due process.[16] In rendering the judgment of dismissal, the trial judge in this case acted without or in excess of jurisdiction, for a judgment which is void for lack of due process is equivalent to excess or lack of jurisdiction.[17] Indeed, "jurisdiction" is the right to hear and determine, not to determine without hearing.[18]

Lack of jurisdiction is one of the grounds for the annulment by the Court of Appeals of judgments or final orders and resolutions of Regional Trial Courts.[19] Hence, the remedy taken by petitioner before the Court of Appeals was correct.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 37341 is REVERSED AND SET ASIDE. The Order dismissing Criminal Case Nos. 6307-6312

is ANNULLED, and this case is REMANDED to the Regional Trial Court of Legazpi City, Branch 8, for further proceedings. The public prosecutor is ORDERED to complete the presentation of all available witnesses for the prosecution.

SO ORDERED.

Bellosillo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Buena, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

Davide, Jr., C.J., Melo, and Mendoza, JJ., in the result.

[1] Sixteenth Division, composed of Associate Justices Hector L. Hofileña (ponente), Jainal D. Rasul (Chairman) and Oswaldo D. Agcaoili.

[2] Presided by Judge Salvador D. Silerio.

[3] Docketed as G.R. Nos. 113273-78 (People v. Hon. Salvador D. Silerio, RTC Judge, Branch 8, Legazpi City, et al.). The petition was dismissed on October 17, 1994, and the motion for reconsideration thereof was denied with finality on November 21, 1994.

[4] Rollo, pp. 44-46.

[5] Ibid., p. 42.

[6] Ibid., p. 19-20.

[7] Palu-ay v. Court of Appeals, et al., 293 SCRA 358, at 361-62 [1998], citing People v. Santiago, et al., 174 SCRA 143 [1989].

[8] Revised Rules of Criminal Procedure, Rule 110, Section 5.

[9] Mosquera v. Panganiban, 258 SCRA 473, 478 [1996].

[10] Padua v. Judge Molina, A.M. No. MTJ-00-1248; citing U.S. v. Leaño. 6 Phil. 368.

[11] People v. Arcilla, 256 SCRA 757, 763-764 [1996].

[12] People v. Quijada, 259 SCRA 191, 263 [1996]; Concurring and Dissenting Opinion, Regalado, J.,

[13] People v. Velasco, 307 SCRA 684, 700 [1999]>, citing Arce, et al. v. Arce, et al., 106 Phil., 630 [1959].

[14] People v. Surtida, 43 SCRA 29, 38-39 [1972], citing People v. Balisacan, G.R. No. L-26376, August 31, 1966 and People v. Gomez, G.R. No. L-22345, May 29, 1967.

[15] People v. Judge Velasco, G.R. No. 127644, September 13, 2000.

[16] People v. Navarro, 63 SCRA 264, 273 [1975].

[17] Ibid., citing Trimica, Inc. v. Polaris Marketing Corp., et al., G.R. No. L-29887, October 28, 1974.

[18] Ibid., citing Windsor v. McVeigh, 93 U.S. 274 , 23 L. Ed. 914, 23A Words and Phrases, p. 121.

[19] 1997 Rules of Civil Procedure, Rule 47, Section 2.

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