

DRA. JOSEFA E. NEPOMUCENO, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 126405. February 25, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

The pivot of inquiry in this special civil action for Certiorari under Rule 65 is: whether or not the Court of Appeals acted with grave abuse of discretion in denying petitioner's Motion To Strike Off the Record OSG's Comment dated June 4, 1996 and in denying her motion to reconsider its December 15, 1995 Decision.

The antecedent facts that matter are, as follows:

On December 15, 1995, the Court of Appeals promulgated its decision in CA GR No. 15386, entitled *People of the Philippines v. Reynaldo Cartalla y Abasolo*.

On January 12, 1996, the petitioner, Dra. Josefa E. Nepomuceno, moved for reconsideration. Acting thereupon on January 23, 1996, the Court of Appeals required the Office of the Solicitor General to comment within ten (10) days from notice.

On June 4, 1996, or after more than four (4) months, the Solicitor General sent in the Comment called for.

On June 19, 1996, while the motion for reconsideration was pending resolution, petitioner presented a "Motion To Strike Off The Record the OSG's Comment dated June 4, 1996", contending that subject Comment was filed beyond the time fixed by the Court of Appeals in its Resolution of May 17, 1996.

On September 20, 1996, the Court of Appeals denied both the "Motion to Strike Off the Record OSG's Comment dated June 4, 1996", as well as the Motion for Reconsideration; ratiocinating, thus:

"The motion to strike off the record the OSG's Comment on the present motion for reconsideration should be denied considering that after the issuance of our Resolution dated May 17, 1996, we issued another resolution dated June 10, 1996 granting plaintiff -appellee a final extension of fifteen days from May 24, 1996 or until June 8, 1996 within which to file its comment. The said comment was timely filed on June 6, 1996.

As to the motion for reconsideration filed by the accused, the same is bereft of merit as the grounds raised therein have already been considered and passed upon in the Decision of the Court promulgated on December 15, 1995, and to new ground or compelling reason exists as to justify a reconsideration of the decision.

WHEREFORE, the motion to strike off OSG's Comment and the motion for reconsideration are DENIED for lack of merit.[1]

Dissatisfied with the aforesaid resolution of the Court of Appeals, petitioner has come to this Court for relief.

The Petition is not impressed with merit.

Contrary to petitioner's stance, subject Comment of the Solicitor General filed on June 4, 1996 was seasonable

because, as can be gleaned from the records on hand, the Court of Appeals gave the Solicitor General several extensions, to wit:

- On February 27, 1996, the Fifth Division granted an extension of thirty (30) days from February 9 to March 10, 1996.
- On March 20, 1996, the same division granted another thirty (30) days from March 10 to April 9, 1996.
- On May 3, 1996, the Former Fifth Division granted in the interest of justice thirty (30) days from April 9 to May 9, 1996.
- On May 17, 1996, the Former Fifth Division granted fifteen (15) days from May 9 to May 24, 1996 but definitely for the last time.
- On June 10, 1996, the Former Fifth Division granted fifteen (15) days from May 24 to June 8, 1996 but definitely for the last time.

In *Esguerra v. Court of Appeals*, 335 Phil 60, citing *Alafriz v. Nable*, 72 Phil 278 (1941), it was held, that:

"xxx Grave abuse of discretion implies such capricious and a whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of the law. "

"There is excess of jurisdiction where the respondent being clothed with the power to determine the case, oversteps his authority as determined by law" (*Rocha v. Crossfield*, 6 Phil 355).

"There is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction." (*Abad Santos v. Province of Tarlac*, 66 Phil 480, *Alafriz v. Nable*, 62 Phil 278)

Grave abuse of discretion is indeed a relative term. In the case under consideration, it is decisively clear that substantial justice would be better served by allowing the Solicitor General enough time and opportunity to comment on the motion for reconsideration of petitioner.

"xxx Laws and rules should be interpreted and applied not in a vacuum or in isolated abstraction but in the light of surrounding circumstances and attendant facts in order to afford justice to all. xxx

xxx xxx xxx

"xxx technical rules barring a full hearing on the merits should be relaxed, again in the interest of justice to all." (*Magsaysay Lines, Inc. vs. Honorable Court of Appeals*, 329 Phil 312, 313)

WHEREFORE, the Petition is DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Vitug, J., on official business abroad.

[1] OSG Comment, p. 6, Rollo, p. 58.

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