EUGENE YU, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 131106. December 07, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review is the decision[1] of the Court of Appeals rendered on February 19, 1997, in CA-G.R. SP No. 42208, and its resolution[2] dated October 15, 1997, denying the motion for reconsideration. In the said decision, the appellate court set aside the order dated December 8, 1995 of Regional Trial Court, Branch 18 of Tagaytay City, in Criminal Cases Nos. TG-2395-94, TG-2395-94-A and TG-23-96-94. The dispositive portion of the assailed decision of the Court of Appeals states:

> WHEREFORE, the Order dated December 8, 1995 of respondent Judge Hon. Eleuterio F. Guerrero directing the prosecution to amend the information so as to charge accused Eugene Yu as an accomplice and the Order dated February 6, 1996 denying prosecution's and petitioner's Motion for Reconsideration are hereby SET ASIDE.
>
> The Order of December 8, 1995 is hereby AFFIRMED insofar as it dismisses the cases against Col. Abelardo Abad.
>
> SO ORDERED.[3]

The said RTC Order dated December 8, 1995, which was set aside by the Court of Appeals, reads:

> WHEREFORE, in the light of the foregoing, this Court finds that probable cause exists against accused Eugene Yu as an accomplice in the instant cases, and the prosecution is accordingly directed to amend the informations filed in these cases for the inclusion of the same accused as an accomplice within ten (10) days upon receipt of a copy hereof. As a consequence, let a warrant for the arrest of Eugene Yu be issued in these cases and bail for his provisional liberty is hereby fixed at P60,000.00 each in these cases.
>
> For lack of probable cause against Col. Abelardo Abad as an accessory in Crim. Cases Nos. TG-2395-94 and TG-2395-94-A, let the charges against the same accused be as they are hereby ordered dismissed, with costs de-officio.
>
> Finally it appearing that the incident pending before the appellate court has been finally resolved in so far as accused Pedro Lim's petition is concerned, let the arraignment of all the accused in these cases be set by the Clerk of this Court on a date convenient to this Court's calendar, preferably sometime in January, 1996 at 8:30 o'clock in the morning.
>
> The Clerk of this Court is further directed to issue notices of arraignment to all the accused and their respective counsels of record.
>
> SO ORDERED.[4]

The antecedent facts, as culled from the records, are as follows:

On November 14, 1994, Atty. Eugene Tan, former National President of the Integrated Bar of the Philippines, and his driver, Eduardo Constantino, were abducted by several men in Alabang, Muntinlupa, Metro Manila. Three days after, their bodies were found in Barangay Malinta, Sampaloc 2, Dasmariñas, Cavite.

Thereupon, the Presidential Anti-Crime Commission (PACC) investigated the abduction and killing of Tan and Constantino. Consequently, the PACC filed with the Department of Justice (DOJ) a complaint against the following: Pedro Lim, Bonifacio Roxas, Eugene Yu (herein petitioner), Patricia Lim-Yu, Sgt. Edgar Allan Abalon, Capt. Alfred Abad,[5] Reynaldo Delos Santos alias "Engine", Rudy Ochoa,[6] Toto Mirasol, Venerando Ozores alias "Benny", Mariano Hizon, Eugene Hizon, and others who were unidentified. The complaint was docketed as I.S. No. 94-557.

On November 29, 1994, the accused received a subpoena directing them to appear for preliminary investigation and to submit their counter-affidavits. On December 1, 1994, the accused submitted their counter-affidavits. However, the PACC submitted additional evidence to support its complaint consisting of the sworn statements of Enriqueta Hizon, Alfonso Chua, Macario Lim and accused Sgt. Edgar Allan Abalon. All the other accused were then given additional time to submit their supplemental counter-affidavits.

On December 2, 1994, the investigating panel issued a partial resolution based on the evidence initially submitted. It found probable cause against Pedro Lim and Bonifacio Roxas. An information was thereafter filed against them with the Regional Trial Court of Tagaytay City.

On December 12, 1994, Pedro Lim and Patricia Lim-Yu, instead of filing their supplemental counter-affidavit, filed a motion to inhibit the members of the investigating panel on the ground of partiality in favor of PACC. The investigating panel, however, considered the case submitted for resolution despite the unresolved motion filed by Lim and Lim-Yu.

On December 13, 1994, the investigating panel rendered an amended and supplemental resolution finding probable cause against Pedro Lim, Bonifacio Roxas, Capt. Alfredo Abad, Reynaldo Delos Santos, Rodolfo Ochoa, Toto Mirasol, Venerando Ozores, Mariano Hizon and Eugene Hizon. However, the complaint against petitioner and Patricia Lim-Yu was dismissed for lack of sufficient evidence to establish probable cause.

One year later, on December 15, 1994, three amended informations were filed against accused Pedro Lim, Bonifacio Roxas, Capt. Alfredo Abad, Reynaldo Delos Santos (at-large), Rodolfo Ochoa (at-large), Toto Mirasol, Venerando Ozores, Mariano Hizon and Eugenio Hizon.

Meanwhile, accused Reynaldo Delos Santos and Rodolfo Ochoa surrendered to the authorities. Thus, the PACC were able to obtain extra-judicial confessions from the two, who pointed to Pedro Lim and petitioner Eugene Yu as the masterminds in the abduction and killing of Atty. Eugene Tan and Eduardo Constantino. They also detailed the participation of Capt. Alfredo Abad and Major Lazaro Gammad. Col. Abelardo Abad, brother of Capt. Alfredo Abad, was likewise implicated as an accessory to the crime.

On December 26, 1994, petitioner Eugene Yu and Col. Abelardo Abad were again issued a subpoena to appear on January 6, 1995, and to submit their counter-affidavits in I.S. No. 94-614 entitled "PACC TF Cabakid, et al. vs. Eugene Yu, Col. Abelardo Abad and Major Lazaro Gammad". Petitioner instead filed a motion to dismiss on the following grounds: (1) that the "case" was fatally defective in the absence of any complaint and accompanying affidavit of the complainant; (2) that the instant case was actually a revival of I.S. No. 94-557 which cleared them from the charges for insufficiency of evidence; and (3) that the alleged "new evidence" was inadmissible in evidence and failed to establish probable cause against him.

Nonetheless, the investigating panel issued a resolution[7] on January 27, 1995, finding probable cause against

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petitioner as principal and Col. Abelardo Abad as an accessory to the crime of kidnapping with murder. However, the complaint against Major Lazaro Gammad was dismissed for insufficiency of evidence. Accordingly, on January 30, 1995, an amended information to include the names of petitioner Eugene Yu and Col. Abelardo Abad as additional accused was filed with the RTC of Tagaytay City.[8]

On January 30, 1995, petitioner filed an "Omnibus Motion to Determine Probable Cause, to Deny Issuance of Warrant of Arrest and to Quash Information," raising basically the same grounds he had cited in his earlier motion to dismiss before the investigating panel.

On December 8, 1995, the RTC of Tagaytay City issued an order directing the amendment of the information by reclassifying the participation of Eugene Yu from principal to accomplice and dismissing the charge against Col. Abelardo Abad. The prosecution filed a motion for reconsideration which was denied. The order of denial was received by the prosecutor's office on February 8, 1996.[9]

On October 14, 1996, the Solicitor General filed with the Court of Appeals a petition for certiorari to annul the aforesaid order issued by the trial court, it being tantamount to usurpation of the exclusive functions of the prosecutor. On review, the Court of Appeals annulled the aforesaid order of the trial court. Petitioner filed a motion for reconsideration which was denied. Hence, the instant petition.

Before us, petitioner now alleges that:

> 4.1
>
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN NOT DISMISSING RESPONDENT'S PETITION FOR CERTIORARI FOR BEING TIME BARRED;
>
> 4.2
>
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN RULING THAT HON. JUDGE GUERRERO COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE ISSUED HIS RESOLUTION DATED DECEMBER 8, 1995 AND ORDER DATED FEBRUARY 6, 1996 DIRECTING THAT PETITIONER YU BE CHARGED AS AN ACCOMPLICE AND IN REVERSING HON. JUDGE GUERRERO'S ASSAILED RESOLUTION AND ORDER;
>
> 4.3
>
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON QUESTIONS OF LAW IN RULING THAT PROBABLE CAUSE EXISTS TO WARRANT CHARGING PETITIONER YU AS A PRINCIPAL IN THE CASES PENDING BEFORE THE TRIAL COURT AND IN NOT ORDERING THE OUTRIGHT DISMISSAL OF THE CASES AGAINST HIM;
>
> IN DOING SO, THE HONORABLE COURT OF APPEALS HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THIS HONORABLE COURT.[10]

In our view, the crucial issue to be resolved first is the timeliness of filing of the petition for certiorari with the Court of Appeals. Unless properly resolved, we cannot proceed further in this case.

Petitioner contends that the petition for certiorari was instituted beyond the reglementary period having been filed only on October 14, 1996, or after the lapse of more than eight (8) months after respondent received on February 8, 1996, the order dated February 6, 1996, issued by Judge Guerrero. Petitioner avers that respondent had only three months or until May 6, 1996, within which to file the petition for certiorari.

Petitioner's contention has merit.

The petition for certiorari was filed with the Court of Appeals on October 14, 1996. At that time, the prevailing rule was that special civil action for certiorari brought under Rule 65 of the Rules of Court may be filed within reasonable time from receipt of the resolution denying the motion for reconsideration.[11] The 1964 Rules of Court did not set a specific time frame for the filing of petitions for certiorari under Rule 65. The yardstick to measure the timeliness of a petition for certiorari is the reasonableness of the duration of time that had expired from the commission of the acts complained of, up to the institution of the proceedings to annul the same.[12] In previous cases, the Court generally considered the period of three (3) months as reasonable in filing a petition for certiorari.[13]

However, it must be stressed that the period of three (3) months is merely used as a yardstick to determine the reasonableness of the period in filing the petition. There is no such declaration that three months is the period for filing the petition, beyond which period no such petition can be filed. If the petition is filed beyond three months, then under normal circumstances, it was filed beyond a reasonable time and should be dismissed. This, however, does not preclude courts from entertaining the petition if warranted by the demands of justice and provided laches has not set in.[14]

In this case, respondent received the order denying its motion for reconsideration on February 8, 1996, and the petition for certiorari assailing said order was filed with the Court of Appeals only on October 14, 1996, or more than eight (8) months later. Certainly, a period of more than eight (8) months is more than the period considered reasonable for filing such petition.[15] The irresistible conclusion is that the petition was not filed on time.

In Cabellan vs. Court of Appeals, the petition for certiorari was filed more than seven (7) months after the RTC affirmed the decision of the MTC ordering the ejectment of petitioner. This Court declared that the petition should be dismissed for having been filed after an unreasonable period of time. A period of seven (7) months is more than the period considered reasonable for filing such petition.[16]

In Santiago vs. Court of Appeals, this Court noted that almost eight (8) months had elapsed before petitioners decided to question the order denying the motion to dismiss. Neither petitioners adduced reasons for the belated recourse to the appellate court. We affirmed the ruling of the Court of Appeals that petitioners were guilty of laches.[17]

In People vs. Magallanes, about nine (9) to ten (10) months had already elapsed before accused challenged the denial of their motions for bail as embodied in their comment. The Court ruled that even if said comment were to be treated as petition for certiorari, still the same would not prosper for not having been seasonably filed.[18]

As mentioned earlier, if the petition for certiorari is filed beyond three months, then normally it should be dismissed for being filed beyond reasonable time. However, this technical rule may be set aside in the higher interest of justice and provided laches has not set in. In this case, the Court of Appeals entertained the petition because, in its view, its filing on October 14, 1996, is within a reasonable period. According to the appellate court, the order dated February 6, 1996, did not become final until June 26, 1996. Petitioner received notice of entry of judgment only on September 26, 1996. It added that to file the petition when a similar action was pending with this Court would be a case of forum shopping.[19] This line of reasoning, however, has no basis in law and jurisprudence.

Under Rule 65 before the Rules of Court was amended in 1997, a petition for certiorari might be filed within a reasonable time from receipt of the resolution denying the motion for reconsideration. The reckoning date in counting the period of filing the petition was the receipt of notice of the denial of the motion for reconsideration which, in this case, was February 8, 1996. The reckoning date was neither the date when the order became final nor the date of the receipt of notice of the entry of judgment of such order. Considering that the petition was filed

with the Court of Appeals more than eight months after receipt of the order sought to be annulled, the same was filed not within reasonable time on the basis of applicable jurisprudence. The petition should have been dismissed outright. Certainly, the appellate court erred in entertaining the petition.

Neither can the supposed violation of the rule on forum shopping justify the belated filing of the petition with the Court of Appeals. Admittedly, respondent had earlier filed a petition for certiorari on the same issue with this Court but was dismissed for being defective and for disregarding the judicial hierarchy.[20] As noted by petitioner, the appellate court seems to imply that the earlier filing of respondent's defective petition with this Court tolls the period for filing the proper action with the proper forum. This is not so. Respondent cannot benefit from the consequences of its mistake. The avoidance of forum shopping cannot excuse respondent so as to correct its mistake of filing a defective petition.

In view of the foregoing disquisition, it is no longer necessary to dwell on the remaining issues raised by petitioner.

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals dated February 19, 1997, and the resolution dated October 15, 1997, are declared NULL AND VOID and SET ASIDE. The orders of the Regional Trial Court of Tagaytay City, Branch 18, dated December 8, 1995 and February 6, 1996, are hereby REINSTATED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena J., on official leave.

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[1] Rollo, pp. 63-80.

[2] Id. at 82-83.

[3] Id. at 80.

[4] Id. at 273-274.

[5] Also referred to as Capt. Alfredo Abad in other parts of the records.

[6] Also referred to as Rodolfo and Rody in some parts of the records.

[7] Rollo, pp. 229-249.

[8] Id. at 218.

[9] Id. at 300.

[10] Id. at 22-23.

[11] PNCC vs. NLRC, G.R. No. 128345, 307 SCRA 218, 225 (1999).

[12] Allied Leasing & Finance Corp. vs. CA, G.R. No. 91988, 197 SCRA 71, 75 (1991); San Juan vs. Cuento, No. L-45063, 160 SCRA 277, 283 (1988).

[13] People vs. CA and Pacificador, G.R. No. 129120, 309 SCRA 705, 711 (1999); PNCC vs. NLRC, G.R. No. 128345, 307 SCRA 218, 225 (1999); Santiago vs. CA, G.R. No. 121908, 285 SCRA 16, 21 (1998); Philgreen Trading Corp. vs. CA, G.R. No. 120408, 271 SCRA 719, 725 (1997); People vs. Magallanes, G.R. Nos.

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118013-14, 249 SCRA 212, 229 (1995).

[14] Philgreen Trading Corp. vs. CA, G.R. No. 120408, 271 SCRA 719, 724-725 (1997).

[15] Santiago vs. CA, G.R. No. 121908, 285 SCRA 16, 20 (1998); Cabellan vs. CA, G.R. No. 93090, 304 SCRA 119, 124 (1999).

[16] G.R. No. 93090, 304 SCRA 119, 124 (1999).

[17] G.R. No. 121908, 285 SCRA 16, 20-21 (1998).

[18] G.R. Nos. 118013-14, 249 SCRA 212, 229 (1995).

[19] Rollo, p. 79.

[20] People vs. Hon. Guerrero, G.R. No. 124380, May 14, 1996 (unsigned resolution), Rollo, p. 279.]

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