

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ACELO VERRA, RESPONDENT.*G.R. No. 134732. May 29, 2002*

Ponente: PUNO, J.

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A day in court is the touchstone of the right to due process in criminal justice. It is an aspect of the duty of the government to follow a fair process of decision-making when it acts to deprive a person of his liberty.[1] But just as an accused is accorded this constitutional protection, so is the State entitled to due process in criminal prosecutions.[2] It must similarly be given the chance to present its evidence in support of a charge.

In the case at bar, petitioner, People of the Philippines, claims that it was denied its day in court and its due process right was breached. Filing this Petition under Rule 45, it seeks to set aside, on pure questions of law, the April 6, 1998 Decision of the Court of Appeals.

On November 14, 1988, respondent Acelo Verra was charged with the crime of murder for killing a certain Elias Cortezo. A warrant of arrest was issued by the Regional Trial Court against him on November 21, 1988. He remained at-large until May 24, 1996 when he voluntarily submitted himself to the jurisdiction of the court accompanied by his counsel. Immediately, arraignment proceeded during which he entered a plea of "Not Guilty."

On the same day, the prosecution called to the witness stand the wife of the victim, private complainant Damiana Cortezo. She testified that: (1) she has executed an affidavit of desistance;[3] (2) she is no longer interested in prosecuting the case; and (3) other witnesses of the shooting incident have turned hostile and have similarly lost concern in pursuing the same. Thereafter, the prosecution, joined by the counsel for the accused, moved for the dismissal of the case. In light of these developments, the trial judge issued an Order dated May 24, 1996 granting the motion, thus.:

"WHEREFORE, after considering the testimony of the private complainant and the motion of the prosecution joined by counsel for the accused, this Court is hopeless (sic) in proceeding with this case. Therefore let this case be considered DISMISSED and the Warrant of Arrest for the accused is hereby cancelled.

SO ORDERED."[4]

Subsequently, two other witnesses of the shooting incident appeared after learning of the dismissal of the case and manifested their willingness to testify. Further, two sisters of the victim assailed the allegation of lack of interest. Consequently, the prosecution filed a Motion to Set Aside the Order of Dismissal on July 22, 1996 asserting that Damiana and the accused misled the trial court and deprived the plaintiff, People of the Philippines, its day in court. For which reason, it argued, the Order dismissing the case should be voided.

On August 21, 1996, the trial court set aside the Order of Dismissal dated May 24, 1996. Respondent moved for its reconsideration but his motion was denied on September 26, 1996. He then instituted before the Court of

Appeals a Petition for Certiorari challenging the August 21 Order. The appellate court rendered a Decision on April 6, 1998 granting the petition. It ruled that the dismissal of the case against petitioner has attained finality, and that its revival requires the filing of a new case or information, viz:

“Thus in the case at bar, when the trial court issued its order of dismissal, as far as the court is concerned, the case was ended. To revive the case against the same accused or to prosecute him anew for the same act imputed to him, the government has to file a new case or information for the reason that the dismissed case had already been terminated, definitely and finally.

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WHEREFORE, the petition is hereby granted and the orders dated August 21, 1996 and September 26, 1996 are hereby SET ASIDE, and the Order dated May 24, 1996 reinstated.”[5]

Hence, the present course of action. In this Petition for Review, petitioner impugns the Decision of the appellate court in that:

“The Court of Appeals decided a question of substance in a way that is not in accord with law and jurisprudence when it ruled that: (i) the state was not denied its day in court and was not misled by private complainant in the dismissal of the case; and (ii) the order of the trial court dismissing the case has attained finality.”[6]

The petition is devoid of merit.

I

Petitioner cannot complain that it was denied its day in court. It was, in the first place, represented by a public prosecutor who was personally present in every stage of the proceeding -- from the arraignment to the promulgation of the dismissal order -- to protect its interests. It was given the chance to submit its evidence as it in fact called to the stand its own witness, Damiana (who incidentally was the only witness presented here), during the day of the hearing. Then, the prosecutor was able to conduct her direct examination. More importantly, petitioner was the one who jointly moved with accused’s counsel for the dismissal of this case due to lack of evidence. The Order of Dismissal was given in open court by the presiding judge without any remonstrance from the prosecution.

II

We are similarly not persuaded by petitioner’s contention that by reason of the deceit employed by Damiana, the prosecution and the trial court were misled.

Well settled is the rule that for fraud to cause the annulment of a judgment, it must be established by clear and convincing evidence. The petitioner must sufficiently prove the specific acts constituting the deceit on the part of Damiana. It must demonstrate that “(1) her statements are untrue, made with knowledge of their falsity or with reckless and conscious ignorance thereof, especially if parties are not on equal terms, made with intent that petitioner act thereon or in a manner apparently fitted to induce it to act thereon, and (2) petitioner must act in reliance on the statements in the manner contemplated, or manifestly probable to its injury.”[7]

Damiana’s declarations on the witness stand regarding the hostility of the other witnesses and lack of interest in prosecuting the case may be false, but there is no proof that they were made with knowledge of its falsity or with reckless and conscious ignorance thereof. It is one thing to allege deceit and fraud but another to prove by evidence the specific acts constituting the same.

To be sure, fraud as a ground for nullity of a judgment must be extrinsic to the litigation. Were this not the rule, there would be no end to the litigation, perjury being of such common occurrence in trials.[8] Fraud is extrinsic or collateral where it prevents a party from having a trial, or real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the manner in which it was procured so that there is never a fair submission of the controversy. In other words, extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of trial of the case, whereby the defeated party has been prevented from exhibiting fully his side of the case, by fraud or deception practiced on him by his opponent.[9]

Enlightening are the following examples given by Justice Miller, viz:

“x x x. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client’s interest to the other side -- these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul a former judgment or decree, or open the case for a new and fair hearing. See, Wells, Res Judicata, sec 499; Pearce v. Olney, 20 Conn., 544; Wierich v. De Zoya, 7 Ill., (2 Gilm.) 385; Kent v. Richards, 3 Md. Ch., 396; Smith v. Lowry, 1 Johns. Ch., 320; De Louis v. Meek, 2 Green (Iowa), 55.

“In all these cases and many others which have been examined, relief has been granted on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court.”[10]

Further, it must be emphasized that the fraud or deceit cannot be of the losing party’s own doing, nor must it contribute to it. The extrinsic fraud must be employed against it by the adverse party, who because of some trick, artifice, or device naturally prevails in the suit. The end result not only defeats legitimate rights of the losing party in the lawsuit. On a larger scale, it circumvents the adversarial system of our litigation process and makes a mockery of our judicial contests. That instead of having two antagonists who genuinely compete to fully ventilate their cause and demolish that of his opponent’s, what transpires is a scripted theatrical drama played before the august hall of an officer of the court.

Examining the facts of the case at bar, we find that no fraud or deceit was properly proved against the respondent. Indeed, petitioner admits that if there was fraud or deceit here, it was practiced by its own witness, Damiana, in making her false testimony. As such, it has no reason to protest. Even assuming, arguendo, that she misled the petitioner and the court, her action should not be taken against the accused. Petitioner has not proffered any proof that Damiana and the respondent were in collusion. Allegation of collusion must be established by competent and credible proof.

To be sure, petitioner has only itself to blame for jointly moving for the dismissal of this case too soon, without first verifying the truth of Damiana’s statement. It could have easily confirmed whether indeed the other witnesses to the shooting incident have turned hostile by contacting them. It cannot put forth the excuse that it did not know their whereabouts or could not get in touch with them, since their addresses were indicated on the Sworn Statements they executed in connection with the killing on September 1, 1987 during the period of police investigation. The Sworn Statements actually formed part of the basis for the filing of the Information against the respondent. Contacts could have similarly been established with the victim’s relatives.

III

As there is no vice which taints the Order of Dismissal of the trial court issued in open court on May 24, 1996, subsequently reduced to writing and entered in the Book of Judgment on May 30, 1996, we hold that it has now attained finality. Petitioner's reliance on the cases of *Villa v. Lazaro*[11] and *Paulin v. Gimenez*[12] is misplaced. We held in *Villa* that a judgment rendered without due process is null and void, could never become final, and could be attacked in any appropriate proceeding. We ruled in *Paulin*, on the other hand, that a violation of the state's right to due process ousts courts of their jurisdiction and warrants a remand of the case to the trial court for further proceeding and reception of evidence. In those two cases, however, it is clear that the aggrieved parties were denied their day in court. In *Villa*, petitioner was not informed of the complaint against her; the administrative inquiry involving her was conducted in the most informal manner by means only of communication requiring submission of certain documents; and the documents she submitted were never given consideration on the pretense of lack of compliance. Similarly, in *Paulin*, the prosecution was stripped of its right to complete the presentation of its evidence when the case therein was prematurely terminated and dismissed. Obviously, the facts in *Villa* and *Paulin* are different. That petitioner, to reiterate, was never denied its day in court nor was it deceived by its own witness is a point already well-belabored.

IV

Finally, we agree with the respondent's claim that to revive the case against him would be violative of his constitutional right against double jeopardy.

Under Article III, Section 21 of the Constitution, "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." [13] In a long line of decisions, we have enumerated the following requisites for double jeopardy to attach: (1) upon a valid indictment; (2) before a competent court; (3) after arraignment; (4) when a valid plea has been entered; and (5) when the defendant was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused. [14] There are however two occasions when double jeopardy will attach even if the motion to dismiss the case is made by the accused himself. The first is when the ground is insufficiency of evidence of the prosecution, and the second is when the proceedings have been unreasonably prolonged in violation of the right to a speedy trial. [15]

In the case at bar, we find all the above-cited requisites present. First, there was a valid information, sufficient in form and substance to sustain a conviction, filed on November 14, 1988 duly signed by 4th Assistant Provincial Fiscal Cesar M. Merin. [16] Second, the Regional Trial Court, Branch 10 of Tacloban City clearly had jurisdiction to hear and try the murder charge against the respondent. Third, he was arraigned in open court on May 24, 1996 with the assistance of a counsel de officio. [17] Fourth, during the arraignment, he entered a plea of not guilty. [18] Finally, there was a valid termination of this case on the basis of the trial judge's Order to Dismiss the case. While it is true that the respondent joined the prosecution in praying for its dismissal, double jeopardy will still attach since the basis for the ruling was the insufficiency of evidence of the prosecution. In view of private complainant's desistance and her testimony that other witnesses have turned hostile and are also no longer interested in prosecuting this case, petitioner clearly lacks the evidence to support the charge.

IN VIEW WHEREOF, there being no showing that the Court of Appeals committed any reversible error, the instant petition is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] See 16B Am.Jur. 2d. § 946.

[2] Depamaylo v. Brotarlo, 265 SCRA 151 (1996).

[3] Exhibit “A”.

[4] Annex “C”, Petition for Review; Rollo, p. 28.

[5] Decision, Annex A, p.4; Rollo, p. 25.

[6] Petition, p. 7; Rollo, p. 13.

[7] Hood v. Wood, 161 P. 210, 213 (1916).

[8] Libudan v. Gil, 45 SCRA 17 (1976).

[9] Macabingkil v. People’s Homesite and Housing Corporation, 72 SCRA 326 (1976).

[10] U.S. v. Throckmorton, 25 L. ed. 93, 95, cited in Macabingkil, supra., at 344.

[11] 189 SCRA 34 (1990).

[12] 217 SCRA 386 (1993).

[13] 1987 Constitution.

[14] Tecson v. Sandiganbayan, 318 SCRA 80 (1999).

[15] People v. Quizada, 160 SCRA 516 (1988).

[16] Information, Original Record, p. 28.

[17] Certificate of Arraignment, Original Records, p. 31.

[18] Ibid.

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