

**RENE S. ONG, MAGDALENO B. ALBARRACIN, JR., PETRONIO C. AALIWIN AND J. O. NERIT, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.**

*G.R. No. 140904. October 09, 2000*

Ponente: MELO, J.

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**MELO, J.:**

Before us is a petition for certiorari and prohibition with prayer for issuance of a writ of preliminary injunction, wherein petitioners, accused before the Metropolitan Trial Court (MeTC) of Makati City, charge said court with having committed grave abuse of discretion when it denied their demurrer to evidence.

The facts of the case are as follows:

On February 8, 1993, Zeny Alfonso purchased a paper bag-making machine for P362,000.00 from the Solid Cement Corporation. When she went to the corporation's Antipolo plant, however, no machine could be given to her, it appearing that the machine sold had been earlier mortgaged to a creditor, who, unfortunately, refused to release the mortgage. Herein petitioners offered to return the money paid by Mrs. Alfonso but she refused and instead filed a criminal complaint with the City Prosecutor of Makati.

The City Prosecutor dismissed the complaint on the ground that liability, if any, would be civil and not criminal in nature. This dismissal was, however, reversed by the Department of Justice.

On October 18, 1994, an Information for estafa and other deceit based on Article 318 of the Revised Penal Code was filed with the MeTC of Makati City. After pre-trial, the prosecution presented as its sole witness complainant Zeny Alfonso. The prosecution then formally offered its documentary evidence and rested its case. The admissibility of these documents was questioned by petitioners.

The disputed documents are alleged photo copies of (1) the approval of the sale of the paper bag-making machine supposedly signed by petitioners; (2) an official receipt of Solid Cement Corporation evidencing payment of P362,000.00; (3) a plant gate pass from one J.P. Valencia dated February 16, 1993 for entry into the Antipolo compound and pull-out of the machine; (4) a letter from one Atty. Maximino Robles demanding delivery of the machine to the complainant; (5) a letter of Solid Cement's Rene S. Ong offering to return P362,000.00 plus interest; (6) a letter from Atty. Robles informing Solid Cement of complainant's refusal to accept the refund of the P362,000.00; (7) a memorandum from five officers or employees of Solid Cement Corporation recommending the sale of the paper bag-making-machine; (8) another gate-pass dated December 3, 1992 from one Ramon Enriquez allowing the pull out of the machine; (9) a letter from one Lorenzo P. Ligot thanking Solid Cement, through one Peter Aaliwin, for the former's grant of a right of first refusal; and (10) a copy of the resolution dated July 26, 1993 of the Provincial Prosecutor's Office of Rizal. The defense objected to the admission of these pieces of evidence, claiming that the same were only unauthenticated photocopies of the originals.

On July 12, 1996, petitioners filed a motion for leave to file demurrer to evidence, attaching thereto their

demurrer. In their pleading, petitioners stressed that all the above-mentioned documents being uncertified photocopies bearing unidentified or unauthenticated signatures are inadmissible in evidence. Without ruling on the motion for leave to file demurrer, the MeTC, on August 19, 1996, held:

WHEREFORE, the instant demurrer is hereby denied and the motion to hold departure order of all accused Granted. Let a copy of this Order be sent to the Commissioner of Bureau of Immigration and Deportation for proper disposition and implementation against the accused RENE ONG, MAGDALENO ALBARRACIN, JR., PETRONIO C. AALIWIN and J.O. NERIT of Solid Cement Corporation, No. 168 Salcedo Street, 3rd Floor, Golden Rock Building, Makati City.

(pp. 113-114, Rollo.)

In its Order denying the demurrer to evidence, MeTC Judge Felicidad Y. Navarro-Quiambao summarized private complainant's testimony as follows:

The prosecutor presented the private complainant Zeny Alfonso who testified that on February 8, 1993, she was awarded by the accused the sale of a Paper Bag Making Machine including its spare parts. On February 16, 1993, she paid in full the purchase price of the machine including the charges for its freight to Cebu in the amount of P362,000.00 and as a consequence of said payment she was issued a Plant Gate Pass for the pull out of shipment of the machine to Cebu; that the following day, she proceeded to the plant site of the Solid Cement Corporation in Antipolo where she was told that accused Rene S. Ong has ordered to stop and discontinue with the shipment of the machine; that on the same day, she rushed to see Mr. Ong in Makati and she was told to wait for a week; that on March 1, 1993, she went again to Mr. Ong who informed her to go back to the plant site for final arrangement regarding the shipment of the paper bag machine so she proceeded to the plant only to be told that the machine cannot be released on order of Mr. Ong; that upon the demand of her lawyer to the Solid Corporation for its compliance with their obligation under the transaction, Mr. Ong offered a compromise which was turned down by her.

(pp. 112-113, Rollo.)

The MeTC, in fact, found that there was a prima facie case against petitioners on the basis of the documents submitted by the prosecution, stating:

The Court noted from the documentary evidence on record that the machine subject of the transaction between the complainant and the accused is mortgaged to another creditor, who, incidentally, refused to release the mortgage on said subject machine. Indeed, this strongly suggest (sic) the existence of a prima facie case that would warrant a trial on the merits. Accordingly, the motion for hold departure order is hereby Granted.

(p. 113, Rollo.)

Acting on a petition for certiorari and prohibition filed by the accused, the Regional Trial Court of Makati, per Judge Teofilo Guadiz, Jr., reversed the above ruling in its order dated May 19, 1997, disposing:

WHEREFORE, in view of the foregoing, the petition is hereby granted. The Order dated August 19, 1996 denying the Demurrer to Evidence and the Order dated September 18, 1996, insofar as it declares the existence of cause to hold the petitioners for further trial, are hereby set aside and declared null and void. The respondent judge is hereby ordered to dismiss Criminal Case No. 157290 entitled People of the Philippines v. Rene Ong, et al.

(p. 159, Rollo.)

The Guadiz resolution was raised to the Court of Appeals by the People. On April 8, 1999, the 13<sup>th</sup> Division thereof (Mabutas [P], Aquino, and Rivera, JJ.) rendered a reversal decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is hereby GRANTED - and the assailed resolution (dated May 19, 1997) and order (dated October 16, 1997) of the respondent judge SET ASIDE. The writ of preliminary injunction issued by this Court on June 5, 1998 is made permanent. The private respondents herein are given the option to either present their evidence (in Criminal Case No. 157290 which is reinstated) before the trial court below (Metropolitan Trial Court) or to submit the case for decision based solely on the prosecutor's evidence.

(p. 71, Rollo.)

Petitioners submit that the Court of Appeals acted contrary to law and jurisprudence and committed grave abuse of discretion in:

1)

finding that appeal and not certiorari was the remedy that should have been availed of by petitioners;

2)

finding that RTC Judge Teofilo Guadiz, Jr. erred in evaluating the prosecution's evidence for sufficiency and inadmissibility;

3)

not finding that the RTC resolution dated May 19, 1997 was an acquittal and not applying double jeopardy in their favor;

The petition is meritorious.

In setting aside the regional trial court's decision which ordered the MeTC to dismiss the criminal case filed against petitioners, the Court of Appeals held that petitioners, after the denial by the MeTC of their demurrer to evidence, should not have filed a petition for certiorari with the regional trial court. In its words:

As pointed out, the Supreme Court, in the case of *Joseph v. Villaluz* (89 SCRA 324), held that it would not annul an interlocutory order denying a motion to dismiss in a criminal case. Appeal is the proper remedy of the petitioners in order to have the findings of fact reviewed by a superior court (*Manalo v. Mariano*, 69 SCRA 80). Such ruling was a reiteration of an earlier one in *People v. Romero* (22 Phil. 565) wherein the Highest Tribunal stressed that the question of whether or not the evidence by the prosecution is sufficient to convince the court that the accused is guilty beyond reasonable doubt of the crime charged, rests entirely within the sound judgment of the trial court. The error, if any is committed by the denial of the demurrer to evidence, can only be corrected by appeal (*Cruz v. People*, 144 SCRA 677).

Similarly, the Supreme Court held in *People v. Court of Appeals* (119 SCRA 162) that it has been the long settled rule that certiorari does not lie to challenge the trial court's interlocutory order denying the accused's motion to dismiss. "The appellate courts will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not yet established the guilt of the accused beyond reasonable doubt. The orderly procedure prescribed by the Rules of Court is for the accused to present his evidence after which the trial court, on its own assessment of the evidence submitted by both the prosecution and defense, will then properly render its judgment of acquittal or conviction. If the verdict is one of acquittal, the case ends there. But if it is one of conviction, then appeal is the proper recourse (*Cruz v. People*, supra).

(pp. 64-65, Rollo.)

In other words, the position of the Court of Appeals is to the effect that after the denial of their demurrer to evidence, petitioners instead of filing a petition for certiorari with the regional trial court, should have presented their evidence and in case of an adverse decision, appealed the same to the regional trial court.

Likewise, the Court of Appeals brushed aside petitioners' invocation of their right against double jeopardy, stating that the order of the regional trial court dismissing the criminal case filed against petitioners did not amount to their acquittal. Held thus the appellate court:

As aptly posited by the petitioner (The People) the requisites that must concur for legal jeopardy to attach are: (a) a valid complaint or information; (b) a court of competent jurisdiction; (c) the accused has pleaded to the charge; and (d) the accused has been convicted or acquitted, or the case dismissed or terminated without the express consent of the accused (People v. Gines, 197 SCRA 481, De la Rosa v. Court of Appeals, 253 SCRA 499). The fourth requisite is lacking, because respondent court's resolution of May 19, 1997 is a "fruit" emerging from a grave abuse of discretion - thus it cannot ripen to an acquittal of the private respondents, whose demurrer to evidence had been denied by the trial court below. It is true that an accused is presumed innocent until his guilt is shown beyond reasonable doubt. However, after the prosecution has adduced evidence, the constitutional presumption of innocence must yield to what has been so amply and persuasively demonstrated (People v. Andal, 70 SCRA 30). The respondent judge could not decide in the special civil action before him whether or not the evidence adduced by the prosecution had established beyond reasonable doubt the guilt of petitioners (private respondents herein), because factual matters are not proper for consideration in proceedings brought either as an original action for certiorari or as an appeal by certiorari (Insular Bank of Asia and America v. Court of Appeals, 228 SCRA 420; Navarro v. Commission on Elections, 228 SCRA 596). It is, therefore, incumbent on the part of the accused (private respondents herein) to neutralize the evidence of the State in order to maintain the presumption of their innocence of the crime of which they were charged. If convicted, appeal will be their (private respondents') proper remedy to have the findings of fact by the trial judge reviewed by a superior court (Manalo v. Mariano, et al., 69 SCRA 80).

Indeed, the rule generally prevailing is that "certiorari does not lie to review a trial court's interlocutory order denying a motion to dismiss (or to acquit), which is equivalent to a demurrer to evidence, filed after the prosecution had presented its evidence and rested its case. An order denying a demurrer to evidence is interlocutory. It is not appealable. Neither can it be the subject of a petition for certiorari (Tadeo v. People, 300 SCRA 744 [1998])."

However, Tadeo itself states that "[f]rom such denial (of the demurrer to evidence), appeal in due time is the proper remedy, not certiorari, in the absence of grave abuse of discretion or excess of jurisdiction, or an oppressive exercise of judicial authority."

Consequently, if the denial of the demurrer to evidence is attended by grave abuse of discretion, the denial may be assailed through a petition for certiorari. This exception was explicitly recognized by the Court in Cruz v. People (303 SCRA 533 [1999]), where we stated that:

The general rule that the extraordinary writ of certiorari is not available to challenge (the denial of the demurrer to evidence) may be subject to exceptions. When the assailed interlocutory orders are patently erroneous or issued with grave abuse of discretion, the remedy of certiorari lies.

Likewise, in Gutib v. Court of Appeals (312 SCRA 365 [1999]), we declared that "the rule is not absolute and admits of an exception. Thus where, as in the instant case, the denial of the motion to dismiss by the trial court was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may assail the order of denial on certiorari."

The present case presents one such exception warranting the resort to the remedy of certiorari, the trial court judge having committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioners' demurrer to evidence. A demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.

The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt (*Gutib v. CA*, *supra*).

In the instant case, there is no competent and sufficient evidence to sustain the indictment or to support a verdict of guilt against petitioners. As pointed out by petitioners, all documentary evidence submitted by the private complainant were uncertified photocopies of certain documents, the signatures on which were either unidentified or unauthenticated.

Section 20, Rule 132 of the Revised Rules of Court provides that "before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a)

by anyone who saw the document executed or written; or

(b)

by evidence of the genuineness of the signature or handwriting of the maker.

Thus, prior to the admission in evidence of a private writing, the identity and authenticity of the document sought to be presented must first be reasonably established. Where there is no proof as to the authenticity of the executor's signature appearing in a private document, such private document should be excluded (*Paz v. Santiago*, 47 Phil 334 [1925]).

The documentary evidence submitted by the complaining witness are private instruments, being instruments executed by private persons without the intervention of a public notary or of other persons legally authorized, by which document some disposition or agreement is proved, evidenced, or set forth (*U.S. v. Orera*, 11 Phil. 596 [1907]).

Being private instruments, their due and valid execution and their genuineness and authenticity must first be established, either by the testimony of any one who saw the writing executed or by evidence of the genuineness of the handwriting of the maker hereof.

A painstaking perusal of the testimony of the prosecution's sole witness reveals, however, that the due execution and authenticity of these documents were never proved. In fact, the prosecution took no effort to prove the due execution and authenticity of these documents during the presentation of their sole witness. Absent such proof, these documents are incompetent as evidence. It is elementary that this Court cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document; much less, accord it evidentiary value (*People v. Sumalpong*, 284 SCRA 464 [1998]). In *People v. Gamiao* (240 SCRA 254 [1995]), we declared, "[p]arenthetically, appellant failed to present in evidence the originals or the xerox copies of the documents hereinbefore discussed. The requirements for the admission of such secondary evidence in court were not satisfied. The Rules of Court provide that private documents require proof of their due execution and authentication before they can be received in evidence. When there is no such proof, the substitutionary documents may be excluded."

Moreover, the documents submitted are mere photocopies of the originals. Thus, they are secondary evidence and as such are not admissible unless there is ample proof of the loss of the originals (Section 3, Rule 130, Revised Rules of Court). However, the loss of the originals have not been proved by the prosecution, neither have they shown that the original is a public record in the custody of a public office or is recorded in a public office, nor that the same is in the custody or under the control of petitioners.

The due execution and authenticity of the documentary evidence presented not having been proved, and since these are mere photocopies, the loss of the originals of which was not previously established, the same are clearly inadmissible in evidence. Being incompetent evidence, the only evidence the prosecution could rely on to prove petitioners' guilt would be the sole testimony of the private complainant. Unsupported by any other evidence, said testimony is insufficient to sustain a finding of culpability.

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient, therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused. In the instant case, the prosecution miserably failed to establish by sufficient evidence the existence of the crime of estafa and other deceit.

Aside from complainant's testimony, the only evidence of petitioners' supposed complicity in the alleged offense is the photocopy of the approval of the sale of the paper bag-making machine, said document containing the names of petitioners Ong, Nerit, Aaliwin, and Albarracin. As stated earlier, however, said document is inadmissible in evidence. Thus, there is no evidence as to their participation in the crime. In fact, among the petitioners, private complainant had personal contact only with Ong, whom she met only after the alleged approval of the sale of the machine. Having met Ong after the sale, Ong could not have misrepresented anything to complainant to induce her to part with her money. As to the others, not having had personal dealings with private complainant, it boggles one's mind to even entertain the speculation that they could have misrepresented anything to the latter.

With our ruling that the documentary evidence submitted by the prosecution is inadmissible in evidence, the prosecution's evidence against petitioners is grossly and patently insufficient to support a finding of guilt. Withal, it was grave abuse of discretion for the MeTC to consider that there was a prima facie case against petitioners warranting a trial on the merits given the paucity of evidence against petitioners.

Had said court been more punctilious and thorough in its study and preparation of the case, it could have fully appreciated the weakness of the state evidence against petitioners, and that it was useless, not to say a waste of time and money, but most of all unfair to the accused, to proceed with the tedious process of trial and direct petitioners to adduce evidence in their defense, since it was obvious from the beginning that petitioners could not be convicted of the crime charged.

In ruling against petitioners, the appellate court also held that petitioners could not avail of their constitutional right against double jeopardy, allegedly because the regional trial court's reversal of the MeTC denial of their demurrer to evidence is a "fruit" emerging from grave abuse of discretion. It declared that Judge Guadiz could not decide in the special civil action filed before him whether or not the evidence adduced by the prosecution had established beyond reasonable doubt the guilt of petitioners, factual matters not being proper for consideration in certiorari proceedings.

It is true that the prerogative writ of certiorari does not lie to correct every controversial interlocutory order but is confined merely to questions of jurisdiction. Its function is to keep an inferior court within its jurisdiction and to relieve persons from arbitrary acts, meaning acts which courts or judges have no power or authority in law to perform. It is not designed to correct procedural errors or the court's erroneous findings and conclusions (*De Vera v. Pineda*, 213 SCRA 434 [1992]).

However, certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record (*Congregation of the Religious of the Virgin Mary v. CA*, 291 SCRA 385 [1998]). As earlier observed, with the inadmissibility of the prosecution's documentary evidence, the trial court's finding of a prima

facie case against petitioners is glaringly unsupported by the sole testimony of private complainant, hence the RTC resolution reversing the MeTC's denial of the demurrer to evidence cannot be said to be the "fruit" of grave abuse of discretion. Since the factual findings of the MeTC are devoid of support in the evidence on record, it was proper for the RTC to review said findings. Moreover, in order to determine whether or not there was grave abuse of discretion in denying the demurrer to evidence, the RTC had to inquire into the admissibility and sufficiency of the documentary and testimonial evidence submitted by the prosecution.

With the grant by the RTC of the demurrer to evidence, the same constituted a valid acquittal and any further prosecution of petitioners on the same charge would expose them to being put twice in jeopardy for the same offense. A dismissal of a criminal case by the grant of a demurrer to evidence is not appealable as the accused would thereby be placed in double jeopardy (See Regalado, Remedial Law Compendium, p. 441).

Lastly, it has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings. The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus. In the exercise of our superintending control over other courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice (*Gutib v. CA*, *supra*).

The case at bar presents one such instance calling for this appropriate remedy. As discussed elsewhere, petitioners have satisfactorily demonstrated in their demurrer that the prosecution failed to prove the crime charged against them, hence, there remains no reason to hold them for trial. Indeed, an accused is always presumed innocent until the contrary is proved. Parenthetically, petitioners have the right to be protected against hasty, malicious, and oppressive prosecution; to be secure from an open and public accusation of a crime; and, from the trouble, expenses and anxiety of a public trial. Similarly situated is the State, which must be shielded at all times from useless and expensive litigations that only contribute to the clogging of court dockets and take a heavy toll on its limited time and meager resources.

WHEREFORE, premises considered, the petition is GRANTED. The decision of the Court of Appeals dated April 8, 1999 setting aside the Regional Trial Court's resolution dated May 19, 1997, as well as respondent appellate court's Resolution dated November 16, 1999 denying reconsideration of its decision, are REVERSED and SET ASIDE. The dismissal of Criminal Case No. 157290 entitled "*People of the Philippines v. Rene S. Ong, et al.*" is AFFIRMED, without prejudice to the filing of an appropriate civil action.

**SO ORDERED.**

Vitug, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

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