FRANCISCO L. BAYLOSIS, SR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 152119. August 14, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

Before us is a Petition for Review on Certiorari[1] under Rule 45 assailing the December 5, 2001 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CR No. 23225, which denied petitioner's Motion for New Trial which was premised on the grounds that the amount misappropriated had been reduced to only PhP 21,981.71 and petitioner wants to change his plea to that of guilty. Likewise assailed is the February 8, 2002 CA Resolution[3] which denied petitioner's Motion for Reconsideration.

The Facts

An Information was filed against petitioner Baylosis for the crime of estafa before the Cebu City Regional Trial Court (RTC), which was docketed as Criminal Case No. CBU-18920. It reads as follows:

> That in, about and during the period from February 1990 to March 5, 1990 in Poblacion, Municipality of Carcar, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with abuse of confidence or unfaithfulness, being the custodian/warehouse supervisor of PCPPI, willfully, unlawfully and feloniously misappropriate, misapply and convert to his own use and benefit the amount of One Hundred Eighteen Thousand One Hundred Eighty One & 71/100 (P118,181.71) Pesos, Philippine Currency, to the damage and prejudice of the Pepsi-Cola Products Philippines, Incorporated in the amount aforestated.
>
> CONTRARY TO LAW.[4]

During arraignment, a plea of NOT GUILTY was entered. Trial ensued in absentia as the accused, being out on bail, did not appear during trial. The prosecution presented two witnesses, namely: (1) Ricardo Tabasa, Warehouse Operations Manager of Pepsi Cola Products Philippines, Inc. (PCPPI); and (2) Leopoldo Abella, PCPPI's Route Manager assigned in the area of Carcar, Cebu.[5]

The testimony of prosecution witness Tabasa consisted of the summary of events which led to the discovery of the said misappropriation. He testified that being the Warehouse Operations Manager, he was tasked to monitor and see to it that all rules, regulations, and policies of the company are implemented by petitioner, the Warehouse Supervisor. Petitioner, on the other hand, was in charge of collecting remittances from salesmen, depositing them in a bank or converting them into money orders or bank drafts the following bank day, and immediately remitting them to the PCPPI's plant in Cebu City.[6]

Witness Tabasa recollected that on March 5, 1990, at 10:00 a.m., petitioner confessed that he had taken out money from the company's accumulated collections starting from the last week of February 1990, which resulted in a cash shortage in the amount of ninety thousand pesos (PhP 90,000). Petitioner confessed that he used the

money to finance a "special project for following-up of land title."[7]

Soon after the confession made by petitioner, a cash count and physical inventory were conducted in the presence of two witnesses. It turned out that the shortage was in the total amount of PhP 118,181.71, which covered the cash sales collection and the physical inventory. These results were all contained in cash count and physical inventory sheets which the accused acknowledged and signed, and even added the notation that the money was used to "put to special projects for following-up of land title."[8]

A demand was made on petitioner to produce the deficient amount. He failed to return said amount; thus, resulting in his preventive suspension and the conduct of an administrative investigation against him. The investigation was rescheduled to several dates due to his non-appearance despite notice. He was dismissed from service as a result of the investigation and based on the documentary evidence that were submitted, and was served a notice of termination.[9]

On the other hand, prosecution witness Abella's testimony merely corroborated Tabasa's testimony. He stated that petitioner voluntarily signed the cash count sheet and further claimed that petitioner voluntarily admitted to the misappropriation.[10]

Petitioner having jumped bail and his counsel manifesting to the court to have the case submitted for decision resulted in petitioner's waiver of the right to submit evidence.[11] On January 10, 1992, the Cebu City RTC rendered a Decision, the dispositive part of which reads:

> WHEREFORE, the Court finds the accused, FRANCISCO BAYLOSIS, GUILTY BEYOND REASONABLE DOUBT, as principal of the crime of Estafa, defined and penalized in Art. 315 of the Revised Penal Code, under subdivision No. 1, par. (b), and after applying the indeterminate sentence law, [condemns] the said accused to suffer a prison term of SEVEN (7) YEARS OF PRISION MAYOR, as Minimum, to SEVENTEEN (17) YEARS OR RECLUSION TEMPORAL, as Maximum, and to [indemnify] the Pepsi Cola Products Philippines, Inc. the amount of P118, 181.71, and to pay the costs.
>
> SO ORDERED.[12]

Petitioner filed a Motion for Reconsideration of said Decision, but the trial court denied it.

Petitioner then filed his Notice of Appeal.[13] Thereafter, a Motion for New Trial[14] was filed by petitioner Baylosis with the CA. In his motion, he begged the CA to consider the affidavit of a certain Zenaida C. Aya-ay, the Credit and Collection Manager of PCPPI. Said affidavit stated that the accused had a remaining balance of only PhP 21,981.71 which he owed PCPPI. He prayed before the CA to remand the case to the RTC for new trial, and that he be allowed to change his previous plea of not guilty to guilty.

On December 5, 2001, the CA promulgated a Resolution[15] denying for lack of merit petitioner's Motion for New Ttrial.

Petitioner's December 18, 2001 Motion for Reconsideration[16] was likewise denied by the CA in its February 8, 2002 Resolution.[17]

Hence, this petition is before us.

The Issue

The lone issue being raised by petitioner is whether the CA acted with grave abuse of discretion in denying his Motion for New Trial filed under Section 14, Rule 124 of the 2000 Rules of Criminal Procedure, as it amounted to a disregard of the doctrine laid down by this Court in Jose v. Court of Appeals,[18] to the effect that "[c]haracteristically, a new trial has been described as a new invention to temper the severity of a judgment x x x."

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The Court's Ruling

The petition must fail.

For a newly discovered evidence to be appreciated as a ground for granting a motion for new trial, it must fairly be shown that (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.[19]

Petitioner presented as a ground for its motion the testimony of Aya-ay, the Credit and Collection Manager of PCPPI, who stated in an affidavit that his liability to PCPPI had been cut down to a mere PhP 21,981.71. In denying the motion, the CA ruled in this wise:

> Perusal of the Affidavit executed by Zenaida Aya-ay reveals that the alleged payments on August 27, 1998, October 26, 1998 and November 6, 1998 were all made after the rendition of the assailed January 10, 1992 Decision. It is obvious that the same cannot be executed, much less produced, during the trial since the payments were made after judgment or after the fact. Hence, the same could hardly be classified as newly discovered evidence.[20]

We AGREE.

In granting a motion for new trial on the ground of newly discovered evidence, the evidence presented must be in actual existence and unknown to the party even if a judgment had been rendered before. This should be the case because otherwise, how could it be discovered evidence when it did not in fact exist previously during trial? "Discovery" is defined as "the act, process, or an instance of gaining knowledge of or ascertaining the existence of something previously unknown or unrecognized."[21] The Court, in granting this remedial remedy, is well aware that more often than not, newly discovered evidence is material evidence which would mean the success or defeat of a party's campaign, of which a party is oblivious during trial, and grants him/her this second opportunity to prove his/her claim.

The CA, in denying petitioner's motion, observed the fact that the lone affidavit dealt with statements made by Aya-ay, PCPPI's Credit and Collection Manager, regarding the payments made by petitioner of the amounts that he "borrowed" after the trial court promulgated its January 10, 1992 judgment. Such testimony, however, does not qualify as "newly discovered evidence" as explained above as a ground for a motion for new trial.

Further, petitioner cites Jose in support of his cause and argues that he does not rely on newly discovered evidence but instead on substantial justice bolstered by Sec. 11, Rule 124 of the Rules of Court, which provides:

> Power of appellate court on appeal. - Upon appeal from a judgment of the Court of First Instance, the appellate court may reverse, affirm, or modify the judgment and increase or reduce the penalty imposed by the trial court, remand the case to the Court of first Instance for new trial or retrial, or dismiss the case.[22]

He elucidates that he "does not seek to obtain, through a new trial, reversal of his conviction of estafa, but only an opportunity for plea bargaining which, it is submitted, can be more properly determined if said new trial is actually conducted."[23]

A review of the cited case reveals that it does not stand toe to toe with the instant case. In said case, petitioner Jose was charged with several crimes, but was convicted of illegal possession of explosives. In asking for a motion for new trial, petitioner Jose posed the lone legal issue of

> [whether the appellate court committed] an error of law and gravely abused its discretion when it denied

> [petitioner Jose's] motion for new trial "for the reception of (1) the written permit of petitioner to possess and use handgrenade, and (2) the written appointment of petitioner as PC agent with Code No. P-36-68 and Code Name 'Safari' (both documents are dated 31 January 1968)."[24]

The existence of said documents was however unrevealed during the trial of his case so as to protect the identity of petitioner Jose as an undercover agent of the Philippine Constabulary. And it was only when he was convicted that the "competent authorities then realized that it was unjust for this man to go to jail for a crime he had not committed, hence, came the desired evidence concerning petitioner's appointment x x x."[25]

The Court, in justifying the grant of the new trial, stated that a "new trial has been described as a new invention to temper the severity of a judgment or prevent the failure of justice."[26] In said case, the circumstances brought up were "exceptional enough to warrant a new trial if only to afford him an opportunity to establish his innocence of the crime charged."[27]

Petitioner, on the other hand, brings before us the circumstance of his payment of the misappropriated amount after a few years from his conviction by the trial court. Said occasion, however, does not count as extraordinary enough to warrant the grant of said motion. In addition, plea bargaining as a ground already comes too late at this stage.

WHEREFORE, we DENY the petition for lack of merit, and AFFIRM the December 5, 2001 and February 8, 2002 Resolutions of the CA.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

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[1] Rollo, pp. 17-41.

[2] Id. at 6-7. The Resolution was penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Romeo J. Callejo, Sr. (Chairperson, a retired Member of this Court) and Josefina Guevara-Salonga.

[3] Id. at 10-12.

[4] Id. at 25.

[5] Id. at 25-26.

[6] Id. at 26.

[7] Id.

[8] Id. at 27.

[9] Id.

[10] Id. at 27-28.

[11] Id. at 28.

[12] Id. at 30

[13] Id. at 31.

[14] Id. at 32-35.

[15] Supra note 2.

[16] Rollo, pp. 36-38.

[17] Supra note 3.

[18] No. L-38581, March 31, 1976, 70 SCRA 257.

[19] Custodio v. Sandiganbayan, G.R. Nos. 96027-28, March 8, 2005, 453 SCRA 24, 33.

[20] Supra note 2, at 7.

[21] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 647 (1993).

[22] Supra note 18, at 264-265.

[23] Supra note 1, at 23.

[24] Supra note 18, at 259.

[25] Id. at 266.

[26] Id. at 265; citing Kearney v. Snodgrass, pp. 309, 310, 12 Or. 311.

[27] Id.

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