

**MARCIAL FAJARDO, PETITIONER, VS. HON. COURT OF APPEALS,
RUBY GAMBOA VDA. DE DIZON, ET AL., MYRNA ILAGAN VDA. DE
MANGUNE, ET AL., CAPT. GENER MANGUNE, AND OLIVIA PAYAD
VDA. DE GU...**

G.R. No. 157707. October 29, 2008

Ponente: QUISUMBING, ACTING C.J.

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QUISUMBING, ACTING C.J.:

This is a petition for certiorari under Rule 65 of the Rules of Court, assailing the Decision[1] dated January 31, 2003 of the Court of Appeals in CA-G.R. CV No. 48419.

It stemmed from four civil cases involving damages filed by the heirs of Alexander T. Dizon, Eduardo and Elizabeth P. Mangune, and Mario C. Gutierrez (the four victims), who died in a vehicular accident along the North Expressway in Angeles City. These cases, docketed at the Regional Trial Court (RTC) of Angeles City, Branch 57 as Civil Cases Nos. 5215,[2] 5216,[3] 5217[4] and 5218,[5] were filed against Perfecto Dacasin and petitioner Marcial Fajardo, being the driver and owner, respectively, of the truck which allegedly sideswiped the jeep carrying the victims.

A criminal complaint for reckless imprudence resulting in homicide and damage to property was also filed against Dacasin as a result of the incident. The criminal case and the above-mentioned civil cases were consolidated and tried jointly, but the trial court nevertheless resolved the criminal case separately, finding Dacasin guilty beyond reasonable doubt of the crime charged.[6] The conviction was affirmed by the Court of Appeals in CA-G.R. CR No. 17302.[7]

As regards the civil aspect, SPO2 Romulo M. Bagsic testified that at around 6:15 p.m. of October 12, 1987, he received a phone call regarding a vehicular accident that took place 500 meters away from Magalang/Angeles City along the North Expressway. Bagsic went to the scene of the incident and saw the four victims sprawled on the right outer lane of the expressway, on the lane bound for Manila. The owner-type jeep of the four victims had fallen into the canal by the side of the road, and a six-wheeler truck rested on its side facing northeast. A portion of the jeep was still attached to the body of the said truck.[8]

Bagsic prepared his investigation report based on the location of the two vehicles and the dead bodies, the debris, and the skid marks of the vehicle for the possible point of impact. Afterwards, Bagsic concluded that the jeep was sideswiped by the truck.[9]

Upon further investigation, Bagsic found at the truck's compartment a gasoline receipt indicating its owner to be a certain M. Fajardo. The lady attendant at the Caltex Gas Station of Balagtas, Bulacan confirmed to Bagsic that the said M. Fajardo is their customer.[10] Petitioner, during trial, acknowledged ownership of the subject truck, an Isuzu six-wheeler truck with license Plate No. CCF-330.

Bagsic further testified that he had the vehicles and dead bodies photographed by a certain Rolledo Sanchez, a

member of the Pampanga Press Club. The jeep was then towed to Angeles City, while the towing of the truck was left to the CDCP, the authority in charge at the North Expressway. However, when Bagsic returned to the scene of the incident, the truck was nowhere to be found. The CDCP disclaimed any knowledge as to the whereabouts of the truck.[11]

In defense, both petitioner and Dacasin denied that it was their six-wheeler truck which figured in the said incident involving the deaths of the four victims, but they admit that at around the same time and place, their truck met an accident when it fell on its side after allegedly running over a hole on the expressway. This alleged accident, as narrated by Dacasin, happened at around 4:00 o'clock in the afternoon of October 12, 1987. After the accident, he left at 5:00 o'clock in the afternoon and proceeded to Nepo, Angeles City. Then, at around 9:00 o'clock in the evening, he proceeded to Bulacan. He left Bulacan at 11:30 o'clock in the evening, and reported to his employer (petitioner) around 12:00 o'clock midnight. Afterwards, he left for Pangasinan.[12]

Dacasin admitted not responding to the subpoena sent by the prosecutor's office asking for his counter affidavit, and added that he was arrested on June 5, 1991, after four years of hiding. Dacasin claimed that he executed a Sinumpaang Salaysay in the presence of his wife at the Mabalacat Police Station, but averred that he was forced to sign the same.[13]

On June 30, 1994, the trial court rendered its decision[14] finding petitioner and Dacasin liable for damages. Upon review, the Court of Appeals affirmed the trial court's decision and adjudged double costs against petitioner and Dacasin.

Claiming to have no other plain, speedy, or adequate remedy, petitioner now comes before us, contending:

THAT THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT AFFIRMED THE SUBJECT DECISION OF THE REGIONAL TRIAL COURT OF ANGELES CITY, BRANCH 57.[15]

Simply put, the issue is: Did the Court of Appeals commit grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the trial court's decision?

Petitioner contends that the findings of the Court of Appeals were based on conjectures as there was no eyewitness when the incident happened. Petitioner imputes grave abuse of discretion on the part of the Court of Appeals in giving credence to the testimony of police investigator Bagsic, the sole witness for the respondents. Also, petitioner claims that the award of damages against them is unwarranted and excessive. Petitioner likewise maintains that it was not his truck that was involved in the incident. However, assuming that it was indeed his truck that got involved in the incident, petitioner is absolved from liability as he was not in the truck when the incident occurred, and that he exercised the due diligence required by law.[16]

After due consideration of the contentions and submissions in this case, we are in agreement that the petition lacks merit.

At the outset, in our view, this case warrants an outright dismissal. Time and again, we have ruled that the filing of a motion for reconsideration is an indispensable condition before resorting to the special civil action for certiorari to afford the court or tribunal the opportunity to correct its error, if any. [17] While this rule admits of exceptions,[18] none is present in this case.

The records show that the January 31, 2003 Decision of the Court of Appeals was received by petitioner on February 12, 2003. Instead of filing a motion for reconsideration, petitioner filed before this Court a petition for certiorari under Rule 65 on April 14, 2003. In doing so, petitioner did not afford the Court of Appeals an opportunity to rectify its alleged errors. Petitioner did not even attempt to explain why he was unable to file a

motion for reconsideration within the reglementary period or even explain why the instant case is an exceptional one.

It bears stressing that he who seeks a writ of certiorari must apply for it in a manner strictly in accordance with the provisions of the law and the Rules.[19] The liberal construction of the Rules should not be a remedy for all procedural maladies. This Court will not tolerate wanton disregard of the procedural rules under the guise of liberal construction.[20]

In addition, petitioner adopted the wrong remedy in bringing this case before us. Instead of filing a petition for certiorari under Rule 65 of the Rules of Court, petitioner should have filed a petition for review on certiorari under Rule 45.

Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review on certiorari, which would be but a continuation of the appellate process over the original case.[21]

On the other hand, a special civil action for certiorari under Rule 65 is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for certiorari will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[22] Such is not the case here.

The assailed Court of Appeals' decision admitting in evidence the documents presented by respondents and giving weight to the testimonies of respondents' witness, if erroneous, involves a mere error of judgment and not one of jurisdiction.[23] Where the real issue involves the wisdom or legal soundness of the decision - not the jurisdiction of the court to render said decision - the same is beyond the province of a petition for certiorari under Rule 65.[24]

WHEREFORE, the petition is DISMISSED for lack of merit. The Decision dated January 31, 2003 of the Court of Appeals in CA-G.R. CV No. 48419 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] CA rollo, pp. 91-99. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Jose L. Sabio, Jr. and Amelita G. Tolentino concurring.

[2] Records, Vol. I, pp. 5-9.

[3] Records, Vol. II, pp. 5-8.

[4] Records, Vol. III, pp. 4-7.

[5] Records, Vol. IV, pp. 1-4.

[6] CA rollo, pp. 37-44. Penned by Judge Mariano C. Del Castillo.

[7] Rollo, p. 15.

[8] Folder of Exhibits, Vol. I, pp. 22, 26 and 53.

[9] Id. at 26 and 31.

[10] Id. at 57-58.

[11] Id. at 39, 49-51 and 63.

[12] CA rollo, pp. 39-40.

[13] Id. at 40.

[14] Id. at 45-60.

[15] Rollo, p. 5.

[16] Id. at 8-9.

[17] Metro Transit Organization, Inc. v. Court of Appeals, G.R. No. 142133, November 19, 2002, 392 SCRA 229, 235.

[18] Id. at 236.

The following have been recognized as exceptions to the rule:

- (a) where the order is a patent nullity, as where the court a quo has no jurisdiction;
- (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings were ex parte or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or where public interest is involved.

[19] Tower Industrial Sales v. Court of Appeals, G.R. No. 165727, April 19, 2006, 487 SCRA 556, 569.

[20] Mercado v. Court of Appeals, G.R. No. 150241, November 4, 2004, 441 SCRA 463, 470.

[21] Id. at 469.

[22] People v. Sandiganbayan, G.R. Nos. 158780-82, October 12, 2004, 440 SCRA 206, 212.

[23] See Deutsche Bank Manila v. Chua Yok See, G.R. No. 165606, February 6, 2006, 481 SCRA 672, 693.

[24] Estrera v. Court of Appeals, G.R. Nos. 154235-36, August 16, 2006, 499 SCRA 86, 94 citing People v. Court of Appeals, G.R. No. 142051, February 24, 2004, 423 SCRA 605, 613.

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