

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DANTE TAN, RESPONDENT.

G.R. No. 167526. July 26, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the June 14, 2004 Resolution[2] and February 24, 2005 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 83433.

The facts of the case are as follows:

On December 21, 2000, two Informations for violation of Rule 36 (a)-1,[4] in relation to Sections 32 (a)-1[5] and 56[6] of the Revised Securities Act, were filed by petitioner People of the Philippines against respondent Dante Tan in the Regional Trial Court (RTC) of Pasig City, Branch 153. They were docketed as Criminal Cases Nos. 119831 and 119832.

The Information[7] in Criminal Case No. 119831 reads:

That on December 10, 1998, or thereabout, in the City of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the beneficial owner of 84,030,000 Best World Resources Corporation shares, a registered security sold pursuant to Sections 4 and 8 of the Revised Securities Act, which beneficial ownership constitutes 18.6% of the outstanding shares of the company, way above the 10% required by law to be reported, and covered by Certificate Nos. DT-UK 55485704 and DT-UR 55485776, did then and there willfully, unlawfully and criminally fail to file with the Securities and Exchange Commission and with the Philippine Stock Exchange a sworn statement of the amount of all BWRC shares of which he is the beneficial owner, within ten (10) days after he became such beneficial owner, in violation of the Revised Securities Act and/or the rules and regulations prescribed and pursuant thereto.

CONTRARY TO LAW.[8]

The Information[9] in Criminal Case No. 119832 reads:

That on June 18, 1999, or thereabout, in the City of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the beneficial owner of 75,000,000 Best World Resources Corporation shares, a registered security which has been sold pursuant to Sections 4 and 8 of the Revised Securities Act, which beneficial ownership constitutes 18.6% of the outstanding shares of the company, way above the 10% required by law to be reported, did then and there willfully, unlawfully and criminally fail to file with the Securities and Exchange Commission and with the Philippine Stock Exchange a sworn statement of the amount of all BWRC shares of which he is the beneficial owner, within ten (10) days after he became such beneficial owner, in violation of the Revised Securities Act and/or the rules and regulations prescribed pursuant thereto.

CONTRARY TO LAW.[10]

After arraignment, respondent pleaded not guilty[11] to both charges and the trial ensued.

On November 24, 2003, petitioner made its formal offer of evidence,[12] consisting of Exhibits "A" to "E" with sub-exhibits, Exhibits "K-1," "K-10" and "K-11," "Q," "R," "S," "T" and "W" with sub-exhibits, and Exhibit "X."

On December 11, 2003, the RTC issued an Order[13] admitting Exhibits "A," "B," "W" and "X," but denied admission of all the other exhibits on the grounds stated therein.

Aggrieved, petitioner filed a Motion for Reconsideration, but it was denied by the RTC in an Order[14] dated January 27, 2004.

In the meantime, on December 18, 2003, respondent filed an Omnibus Motion for Leave to File Demurrer to Evidence[15] and to admit the attached Demurrer to Evidence.

On January 29, 2004, the RTC issued another Order[16] granting respondents' Motion for Leave to File the Demurrer and forthwith admitted respondent's attached Demurrer. The RTC also ordered petitioner to file an opposition.

On February 18, 2004, petitioner filed its Opposition[17] to the Demurrer to Evidence. Respondent then filed a Reply.[18]

On March 16, 2004, the RTC issued an Order[19] granting respondent's Demurrer to Evidence, the dispositive portion of which reads:

WHEREFORE, finding the Demurrer to Evidence filed by accused Dante Tan to be meritorious, the same is GRANTED.

SO ORDERED.[20]

On April 12, 2004,[21] petitioner filed a Petition for Certiorari[22] before the CA assailing the December 11, 2003, January 27, 2004, and March 16, 2004 Orders of the RTC.

On June 14, 2004, the CA issued a Resolution denying the petition, the dispositive portion of which reads:

WHEREFORE, in the context of all the foregoing considerations, it would be futile to take further action on the herein petition, which is therefore DISMISSED outright for evident want of merit.

SO ORDERED.[23]

In denying the petition, the CA ruled that the dismissal of a criminal action by the grant of a Demurrer to Evidence is one on the merits and operates as an acquittal, for which reason, the prosecution cannot appeal therefrom as it would place the accused in double jeopardy.[24]

Aggrieved, petitioner filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution dated February 24, 2005.

Hence, herein petition, with petitioner raising the lone assignment of error, to wit:

RESPONDENT COURT GRAVELY ERRED IN PRECLUDING THE PEOPLE FROM PROSECUTING ITS CASES AGAINST DANTE TAN.[25]

The petition has no merit.

Notwithstanding the RTC's grant of respondent's Demurrer to Evidence, petitioner contends that the CA erred in applying the rules on double jeopardy. Specifically, petitioner argues that double jeopardy does not apply in cases decided by the trial court without jurisdiction and in violations of petitioner's right to due process.[26]

In *People v. Sandiganbayan*,^[27] this Court explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

The demurrer to evidence in criminal cases, such as the one at bar, is "filed after the prosecution had rested its case," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.^[28]

The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent.^[29]

These elements are present here: (1) the Informations filed in Criminal Cases Nos. 119831 and 119832 against respondent were sufficient in form and substance to sustain a conviction; (2) the RTC had jurisdiction over Criminal Cases Nos. 119831 and 119832; (3) respondent was arraigned and entered a plea of not guilty; and (4) the RTC dismissed Criminal Cases Nos. 119831 and 119832 on a demurrer to evidence on the ground of insufficiency of evidence which amounts to an acquittal from which no appeal can be had.

The rule on double jeopardy, however, is not without exceptions. In *People v. Laguio, Jr.*,^[30] this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:

x x x The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham. However, while certiorari may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.^[31]

After an extensive review of previous Court decisions relevant to herein petition, this Court finds that the abovementioned exception is inapplicable to the factual milieu herein. This Court finds that the RTC did not abuse its discretion in the manner it conducted the proceedings of the trial, as well as its grant of respondent's demurrer to evidence.

Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.^[32]

In *Galman v. Sandiganbayan*,^[33] this Court ruled that the prosecution was denied due process of law when the trial was but a mock trial, to wit:

More so does the rule against the invoking of double jeopardy hold in the cases at bar where as we have held, the sham trial was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused.^[34]

In addition, in *People v. Bocar*,^[35] this Court ruled that there is no double jeopardy when the prosecution was not allowed to complete its presentation of evidence by the trial court, to wit:

It is evident from the brief transcript of the proceedings held on July 7, 1967 that the parties were not placed under oath before they answered the queries of the respondent Judge (pp. 11-17, rec.). Verily, no evidence in law had as yet been entered into the records of the case before respondent Court. Respondent Court's issuance of the questioned dismissal order was arbitrary, whimsical and capricious, a veritable abuse of discretion which this Court cannot permit.

Moreover, it is clear from the same transcript that the prosecution never had a chance to introduce and offer its evidence formally in accordance with the Rules of Court (pp. 11-17, rec.). Verily, the prosecution was denied due process.

Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated. x x x[36]

Likewise, in *People v. Judge Albano*,[37] this Court held that there is no double jeopardy when the trial court preemptively dismissed the case, thus:

The trial court exceeded its jurisdiction when it practically held that the prosecution failed to establish the culpability of the accused in a proceeding which does not even require the prosecution to do so. It acted with grave abuse of discretion, tantamount to lack of jurisdiction, when it preemptively dismissed the cases and, as a consequence thereof, deprived the prosecution of its right to prosecute and prove its case, thereby violating its fundamental right to due process." With this violation, its Orders, dated 28 October 1976 and 20 December 1976, are therefore null and void. Likewise, for being null and void, said orders cannot constitute a proper basis for a claim of double jeopardy.[38]

In *Saldana v. Court of Appeals*,[39] this Court ruled that the prosecution's right to due process is violated when the trial court aborted its right to complete its presentation of evidence, thus:

The order of the Court of Appeals reinstating the criminal case for further hearing by the trial court does not violate the rule on double jeopardy. One of the elements of double jeopardy is a competent court. The trial court in this case was ousted from its jurisdiction when it violated the right of the prosecution to due process by aborting its right to complete the presentation of its evidence. Hence, the first jeopardy had not been terminated. The remand of the case for further hearing or trial is merely a continuation of the first jeopardy. It does not expose the accused to a second jeopardy. x x x[40]

Thus, the question to be resolved, given the factual molding of herein petition, is "did the RTC violate petitioner's right to due process?" On this note, this Court rules that petitioner was given more than ample opportunity to present its case as gleaned from the factual antecedents which led to the grant of respondent's demurrer.

On September 18, 2001, petitioner completed its presentation of evidence and, on the day after, filed its formal offer of evidence. On January 21, 2002, respondent filed an opposition to petitioner's formal offer. Instead of filing a reply as directed by the RTC, petitioner filed a "Motion to Withdraw Prosecution's Formal Offer of Evidence and to Re-open Presentation of Evidence." [41] Said motion was granted by the RTC and petitioner thus continued its presentation of evidence.

On January 28, 2003, petitioner ended its presentation of additional witnesses and was then ordered by the RTC to formally offer its exhibits. On February 26, 2003, petitioner filed a request for marking of certain documents and motion to admit attached formal offer of evidence.[42] The motion was initially denied by the RTC, but on motion for reconsideration the same was granted by the RTC. The RTC, thus, ordered petitioner to file anew its formal offer of evidence. Finally, on November 24, 2003, petitioner filed its Formal Offer of Evidence.[43]

After respondent filed its Demurer to Evidence, the RTC, in an Order dated January 29, 2004, directed petitioner to file its opposition thereto. On February 18, 2004, petitioner filed its Opposition[44] to the demurrer.

Based on the foregoing, it is clear that the RTC never prevented petitioner from presenting its case. Unlike in *Bocar and Saldana* where the prosecution was prevented from completing its presentation of evidence, petitioner was given the opportunity to present its case, formally offer its evidence and oppose respondent's demurrer. It even bears to point out that the RTC even allowed petitioner to withdraw its formal offer of evidence after having initially rested its case and then continue its presentation by introducing additional witnesses. Thus, no grave abuse can be attributed to the RTC as petitioner's right to due process was not violated. Even Galman finds no application to the case at bar as clearly such trial cannot be considered a sham based on the abovementioned considerations.

Petitioner argues that the RTC displayed resolute bias when it chose to grant respondent's demurrer to evidence notwithstanding that it had filed a "Motion to Hold in Abeyance the Resolution of Accused Dante Tan's Demurrer to Evidence and The Prosecution's Opposition Thereto." [45] Petitioner contends that instead of acting on the motion, the RTC peremptorily granted respondent's demurrer to evidence which prevented petitioner from its intention to file a petition for certiorari to question the December 11, 2003 and January 27, 2004 Orders of the RTC.

While it would have been ideal for the RTC to hold in abeyance the resolution of the demurrer to evidence, nowhere in the rules, however, is it mandated to do so. Furthermore, even if this Court were to consider the same as an error on the part of the RTC, the same would merely constitute an error of procedure or of judgment and not an error of jurisdiction as persistently argued by petitioner. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *antefois acquit*. [46] We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case cannot now be corrected because of the timely plea of double jeopardy. [47] To reiterate, the only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction which cannot be attributed to the RTC simply because it chose not to hold in abeyance the resolution of the demurrer to evidence. Consequently, petitioner's attempt to put in issue the December 11, 2003 and January 27, 2004 Orders of the RTC which denied admission of certain documentary exhibits in evidence must fail. As correctly manifested by the CA, the said Orders have already been overtaken by the March 16, 2004 Order, which already granted respondent's demurrer to evidence. Hence, this Court would be violating the rules on double jeopardy if the twin orders were to be reviewed after a finding that the CA did not commit any grave abuse of discretion in granting the demurrer to evidence.

Lastly, even if this Court were to review the action taken by the RTC in granting the demurrer to evidence, no grave abuse can be attributed to it as it appears that the 29-page Order granting the demurrer was arrived at after due consideration of the merits thereto. As correctly observed by the CA, the RTC extensively discussed its position on the various issues brought to contention by petitioner. One of the main reasons for the RTC's decision to grant the demurrer was the absence of evidence to prove the classes of shares that the Best World Resources Corporation stocks were divided into, whether there are preferred shares as well as common shares, or even which type of shares respondent had acquired, thus:

To secure conviction for the violations of RSA Secs. 32 (a-1) and 36 (a), it is necessary to prove the following: (1) the BW Resources Corporation ("BW") has equity securities registered under the Revised Securities Act; [2] that the equity securities of BW Resources Corporation are divided into classes, and that these classes are registered pursuant to the Revised Securities Act; (3) the number of shares of BW Resources Corporation (authorized the number of shares of BW Resources (authorized capital stock) and the total number of shares per class of stock; (4) the number of shares of a particular class of BW stock acquired by the accused; (5) the fact of the exact date, the accused [becomes] the beneficial owner of ten (10%) percent of a particular class of BW shares; and (6) the fact, the accused failed to disclose his ten (10%) percent ownership within ten days

from becoming such owner.

It is very clear from the evidence formally offered, that the foregoing facts were not proven or established. These cases were for Violations of RSA Rule 32 (a)-1 and Section 56 of Revised Securities Act, however, it is very surprising that the prosecution never presented in evidence the Article of Incorporation of BW Resources Corporation. This document is very vital and is the key to everything, including the conviction of the accused. Without the Article of Incorporation, the Court has no way of knowing the capitalization authorized capital stock of the BW Resources Corporation, the classes of shares into which its stock is divided and the exact holdings of Dante Tan in the said corporation. Its not being a prosecution's evidence renders impossible the determination of the ten (10%) percent beneficial ownership of accused Dante Tan, as there is no focal point to base the computation of his holdings, and the exact date of his becoming an owner of ten (10%) percent.[48]

There is no showing that the conclusions made by the RTC on the sufficiency of the evidence of the prosecution at the time the prosecution rested its case, is manifestly mistaken. Assuming, however, that there is an error of judgment on the denial of admission of certain exhibits of the prosecution and the appreciation of the prosecution's case, there is to this Court's mind, no capricious exercise of judgment that would overcome the defense of double jeopardy.

Withal, it bears to stress that the fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.[49] While petitioner insists that the RTC acted with grave abuse of discretion, this Court finds that none can be attributed to the RTC. Consequently, the CA did not err when it affirmed the assailed Orders of the RTC.

On a final note, this Court is aware of this Court's Third Division Decision dated April 21, 2009 entitled Dante Tan v. People of the Philippines[50] wherein respondent argued that his right to a speedy trial was violated by the prosecution. This Court denied the petition and ruled for the remand of the case to the RTC for further proceedings. It must be pointed out that said decision involves Criminal Case No. 119830,[51] which is distinct and separate from Criminal Case No. 119831 and Criminal Case No. 119832 which are the subject matter of herein petition. Thus, the resolution of the case at bar is without prejudice to the proceedings that are being conducted in Criminal Case No. 119830 at whatever stage it may be.

WHEREFORE, premises considered, the petition is DENIED. The June 14, 2004 Resolution and February 24, 2005 Resolution of the Court of Appeals, in CA-G.R. SP No. 83433 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Bersamin,[*] Abad, and Mendoza, JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated July 19, 2010.

[1] Rollo, pp. 8-47.

[2] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam concurring; id. at 48-58.

[3] Id. at 59-62.

[4] Sec. 36. Directors, officers and principal stockholders. -- (a) Every person who is directly or indirectly the beneficial owner of more than ten (10%) per centum of any class of any equity security which is registered

pursuant to this Act, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a securities exchange or by the effective date of a registration statement or within ten (10) days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is registered on a securities exchange, also with the exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is registered on a securities exchange, shall also file with the exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

[5] Sec. 32. Reports. - (a) (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to this Act, is directly or indirectly the beneficial owner of more than ten (10%) per centum of such class shall, within ten days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the stock exchanges where the security is traded, and to the Commission a sworn statement x x x.

[6] Sec. 56. Penalties. Any person who violates any of the provisions of this Act, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Act, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than five thousand (P5,000.00) pesos nor more than five hundred thousand (P500,000.00) pesos or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

[7] Rollo, pp. 74-76.

[8] Id. at 74-75.

[9] Id. at 77-79.

[10] Id. at 77-78.

[11] Id. at 14.

[12] Id. at 94-98.

[13] Id. at 101-104.

[14] Id. at 105-115.

[15] Id. at 116-119.

[16] Id. at 120-124.

[17] Id. at 125-142.

[18] Id. at 148-152.

[19] Id. at 153-181.

[20] Id. at 181.

[21] Note that the attached copy of petitioner's petition before the CA was stamped as received by the CA on April 15, 2004 and not April 12, 2004.

[22] Rollo, pp. 182-231.

[23] Id. at 58.

[24] Id. at 52.

[25] Id. at 23.

[26] Id.

[27] 488 Phil. 293 (2004).

[28] Id. at 309-310. (*Italics in the original*).

[29] Paragraph 1, Section 7, Rule 117 of the Rules of Court provides:

SEC. 7. Former conviction or acquittal; double jeopardy. -- When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

[30] G.R. No. 128587, March 16, 2007, 518 SCRA 393.

[31] Id. at 408, citing *Sanvicente v. People*, 441 Phil. 139 (2002). (*Emphasis supplied.*)

[32] *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

[33] No. L-72670, September 12, 1986, 144 SCRA 43.

[34] Id. at 87.

[35] No. L- 27935, August 16, 1985, 138 SCRA 166.

[36] Id. at 170.

[37] 246 Phil. 530 (1988).

[38] Id. at 543.

[39] G.R. No. 88889, October 11, 1990, 190 SCRA 396.

[40] Id. at 402.

[41] Rollo, pp. 80-84.

[42] Id. at 85-87 (with attachments).

[43] Id. at 94-98.

[44] Id. at 125-142.

[45] Id. at 143-146.

[46] *People v. Hernando*, No. L- 55213, October 9, 1981, 108 SCRA 121, 131.

[47] *Commission on Elections v. Court of Appeals*, G.R. No. 108120, January 26, 1994, 229 SCRA 501, 507, citing *People v. Francisco*, 128 SCRA 110 (1984); *People v. City Court of Silay*, 74 SCRA 247 (1976); *City Fiscal of Cebu v. Kintanar*, 32 SCRA 601 (1970); *People v. Nieto*, 103 Phil. 1133 (1958).

[48] Rollo, pp. 49-50. (Emphasis supplied.)

[49] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 13 (2004).

[50] G.R. No. 173637.

[51] Criminal Case No. 119830 pertains to allegations that Dante Tan employed manipulative devises in the purchase of Best World Resources Corporation (BW) shares.

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