PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND MARGARITA C. SIA, RESPONDENTS.

G.R. NO. 172989. June 19, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for certiorari under Rule 65 of the Rules of Court assails the October 26, 2005 Decision[1] of the Court of Appeals in CA-G.R. CR No. 28562 which affirmed with modification the Decision of the Regional Trial Court of Makati City, Branch 66, by deleting the penalty of imprisonment and imposing instead a fine of P200,000.00 for each violation of Batas Pambansa (BP) Blg. 22, as well as the April 17, 2006 Resolution[2] denying its motion for partial reconsideration.

Honig Sugar Trading Corporation (HSTC) is a domestic corporation engaged in the trading of raw and refined sugar and its by-products. Fifty percent (50%) of its outstanding capital stock is owned by New Frontier Holding Corp. (NFHC), also a domestic corporation wholly owned by respondent Margarita C. Sia's family. South Pacific Sugar Corporation (SPSC) is another domestic corporation wholly owned and controlled by the Sia family. Respondent Margarita C. Sia was the Chairman of the Board of Directors of HSTC and the President and a member of the board of directors of SPSC. HSTC and SPSC do business with each other; SPSC refines the raw sugar of HSTC, sometimes buys them for resale, and sells HSTC's refined sugar. Generally, their business transactions were carried on a credit basis.

In the course of their transactions, SPSC issued checks in favor of HSTC, with respondent Sia as signatory. Among the checks issued by respondent were: HRR0005306773 for P42,625,000; HRR0005306682 for P15,840,000; HRR0005306774 for P91,776,970 and HRR0005306775 for P9,180,000, in the total amount of P159,421,970.00.

On January 13, 1999, Sia wrote a letter to Mr. Robert Dean of HSTC requesting not to deposit the checks pending the accounting of SPSC's total obligation, and another letter to United Coconut Planters Bank (UCPB) asking for a "Stop Payment Order" (SPO) for the same reason.[3]

On February 10, 1999, SPSC and HSTC executed a Loan Agreement[4] whereby the latter extended a loan to SPSC amounting to P579,835,538.63, inclusive of all its outstanding obligations, subject to the completion of the accounting on March 15, 1999.[5]

HSTC deposited the subject checks in its Far East Bank and Trust Company account in Makati City but were dishonored for having been the subject of a SPO and for having been "Drawn Against Insufficient Funds" (DAIF).[6] In four separate letters dated May 26, 1999,[7] Mr. Raul V. Gamban, President of HSTC, informed respondent of the dishonor and demanded payment thereof. In reply, respondent demanded the withdrawal of the demand letter as HSTC's Board of Directors did not authorize any officer to make such a demand and that the Loan Agreement effectively superseded or cancelled the issued checks.[8]

On February 23, 2000, Mr. Vicente S. Cenzon, a member of the Board of Directors of HSTC, filed four separate complaint-affidavits[9] against respondent Sia for violation of BP Blg. 22 and estafa, which led to the filing of four separate Informations before the Metropolitan Trial Court of Makati City, Branch 62. The cases were consolidated and docketed as Criminal Case Nos. 293441-44.[10]

After joint trial, the trial court rendered a Decision finding respondent guilty of four counts of violation of BP Blg. 22, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered finding the accused Margarita C. Sia guilty beyond reasonable doubtof four (4) counts of violation of B.P. 22 and is sentenced to suffer the penalty of Six (6) months imprisonment for each count and to indemnify the private complainant the amount of Forty Two Million Six Hundred Twenty Five Thousand Pesos (P42,625,000.00) in Crim. Case No. 293441; the amount of Fifteen Million Eight Hundred Forty Thousand (P15,840,000.00) Pesos for Crim. Case No. 293442; the amount of Ninety One Million Seven Hundred Seventy Six Thousand and Nine Hundred Seventy (P91,776,970.00) Pesos for Crim. Case No. 293443 and the amount of Nine Million One Hundred Eighty Thousand (P9,180,000.00) for Crim. Case No. 293444 as civil indemnity with interest at the rate of twelve (12%) percent per annum from the filing of the Information until fully paid, plus attorney's fees of Thirty Thousand Pesos (P30,000.00) and costs.
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> SO ORDERED.[11]

Respondent appealed before the Regional Trial Court which affirmed the joint decision of the lower court.[12] She then filed a petition for review with the Court of Appeals which affirmed her conviction but modified the decision by deleting the penalty of imprisonment and imposing instead a fine of P200,000.00 for each case, thus:

> WHEREFORE, the petition for review is partially GRANTED. The assailed decision of RTC Br. 66 Makati City affirming the joint decision of the MTC Br. 62 of Makati City is hereby AFFIRMED with MODIFICATION that the imposition of the penalty of 6 months imprisonment for each case on petitioner be deleted and adjudging her instead to pay a fine of P200,000.00 for each of the cases, in addition to the civil liability for the value of the checks in question. In case petitioner is unable to pay such fine, the rule on subsidiary penalty under Article 39 of the Revised Penal Code shall be applied.
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> SO ORDERED.[13]

Both parties filed motions for reconsideration with the Court of Appeals which were both denied.[14]

On June 26, 2006, petitioner People of the Philippines, thru the Office of the Solicitor General (OSG), filed a petition for certiorari under Rule 65 of the Rules of Court alleging that:

> I
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> RESPONDENT COURT GRAVELY ABUSED ITS DICRETION WHEN IT DOWNGRADED THE PENALTY IMPOSED ON RESPONDENT SIA FROM IMPRISONMENT TO FINE DESPITE HER CHARACTER AS A WHITE-COLLARED OFFENDER AND ECONOMIC SABOTEUR.
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> II
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> RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT CREDITED RESPONDENT SIA WITH GOOD FAITH BASED ON SUPPOSED DOCUMENTS THAT SHE HERSELF DID NOT IDENTIFY ON THE WITNESS STAND NOR SUBJECTED TO THE PEOPLE'S SCRUTINY AND EXAMINATION.
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> III
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> RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT RULED THAT RESPONDENT SIA IS NOW SHIELDED AGAINST DOUBLE JEOPARDY.[15]

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At the outset, it must be stated that the petition suffers from a fatal infirmity. Petitioner's remedy from the adverse decision of the Court of Appeals would have been to file a petition for review on certiorari under Rule 45 within 15 days after notice of denial of its motion for partial reconsideration. This is the proper remedy of a party aggrieved by a decision of the Court of Appeals. However, instead of a petition for review under Rule 45, petitioner filed a petition for certiorari under Rule 65 alleging grave abuse of discretion on the part of the Court of Appeals when it substituted the penalty of imprisonment with a fine of P200,000,00 for each case.

A petition under Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies. And under Section 5(f) of Rule 56 of the Rules of Court, an error in the choice or mode of appeal, as in this case, merits an outright dismissal.[16]

Furthermore, the instant petition lacks merit. It seeks to impose a harsher penalty upon respondent in clear violation of Section 2 of Rule 122. Indeed, both the accused and the prosecution may appeal a criminal case, but the government may do so only if the accused would not be placed in double jeopardy. Moreover, the prosecution cannot appeal on the ground that the accused should have been given a more severe penalty.[17]

In People v. Leones,[18] we held that while "it is true that this Court is the Court of last resort, there are allegations of error committed by a lower court which we ought not to look into to uphold the right of the accused. Such is the case in an appeal by the prosecution seeking to increase the penalty imposed upon the accused for this runs afoul of the right of the accused against double jeopardy."[19] Further, it added:

> This Court has not just once ruled that where the accused after conviction by the trial court did not appeal his conviction, an appeal by the government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy and should therefore be dismissed. x x x
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> x x x x
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> Even assuming that the penalties imposed by the trial court were erroneous, these cannot be corrected by the Court on appeal by the prosecution. x x x.[20]

The only instance when double jeopardy will not attach, or the penalty may be increased is through a petition for certiorari on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction of the Court of Appeals. Petitioner availed of this remedy, however, it failed to demonstrate grave abuse of discretion on the part of the Court of Appeals.

In praying to reinstate the penalty of imprisonment, petitioner is asking this Court to re-evaluate the evidence relied upon by the Court of Appeals vis-avis the philosophy enunciated in Vaca v. Court of Appeals and Lim v. People in fixing the penalty, that is, the redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order.[21] This cannot be done via petition for certiorari or appeal.

There is no merit in petitioner's argument that respondent deserves the penalty of imprisonment considering that she is a white-collared offender who introduced into circulation several bum checks and that several cases for estafa are pending before the trial courts. As aptly held by the Court of Appeals:

> There is nothing in the case at bench which warrants non-application of the policy enunciated in the Vaca and Rosa Lim cases. The interests of justice would be better served if fine rather than imprisonment is imposed on petitioner who did not personally benefit from the transaction. A fortiori, a fine in the maximum amount of P200,000.00 for each case in lieu of imprisonment would be more appropriate penalty for her, aside from being held civilly liable for the value of the checks.

> As it is, petitioner has not yet been convicted of any criminal offense by final judgment. While it may be true that she has a string of cases, nonetheless no final judgment has as yet been rendered in any of those cases. Hence, she is still entitled to the presumption of innocence. Absent any showing of bad faith on the part of petitioner, deletion of the penalty of imprisonment is proper. Should petitioner, however, be unable to pay the fine, the provision of the Revised Penal Code on subsidiary imprisonment shall apply.[22]

Consequently, the decision of the Court of Appeals is now final and executory and can no longer be reviewed, nor be modified by imposing harsher penalties as this would place respondent in double jeopardy.

Besides, even assuming that the Court of Appeals misappreciated the evidence and erroneously substituted the penalty of imprisonment with a fine, these cannot be corrected on an appeal by the prosecution. Given the far-reaching scope of private respondent's right against double jeopardy, an appeal based on an alleged misappreciation of evidence will not lie.[23] Whatever error may have been committed by the Court of Appeals was merely an error of judgment and not of jurisdiction. It did not affect the intrinsic validity of the decision. For, as long as it acted within its jurisdiction, any alleged error committed in the exercise thereof will amount to nothing more than an error of judgment reviewable and may be corrected by a timely appeal.[24]

WHEREFORE, in view of the foregoing, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Austria-Martinez,and Chico-Nazario, JJ., concur.
Nachura, J., No part.Filed pleadings as Sol Gen.

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[1] Rollo, pp. 39-63. Penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Rodrigo v. Cosico and Regalado E. Maambong.

[2] Id. at 65-74.

[3] Id. at 212-213.

[4] Id. at 214-223.

[5] Id. at 216.

[6] Id. at 102.

[7] Id. at 103, 164, 255 & 341.

[8] Id. at 226 & 227.

[9] Id. at 158-159, 253, 336-337 & 426-427.

[10] Id. at 508.

[11] Id. at 520.

[12] Id. at 527.

[13] Id. at 62-63.

[14] Id. at 74.

[15] Id. at 21-22.

[16] Perez-Rosario v. Court of Appeals, G.R. No. 140796, June 30, 2006, 494 SCRA 66, 80-81.

[17] Philippine Rabbit Bus Lines, Inc. v. People, G.R. No. 147703, April 14, 2004, 427 SCRA 456, 465.

[18] 418 Phil. 804 (2001).

[19] Id. at 805.

[20] Id. at 806.

[21] Buatis, Jr. v. People, G.R. No. 142509, March 24, 2006, 485 SCRA 275, 291.

[22] Rollo, p. 62.

[23] Sanvicente v. People, 441 Phil. 139, 147 (2002).

[24] Rigor v. Court of Appeals, G.R. No. 167400, June 30, 2006, 494 SCRA 375, 380.

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