PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ENRIQUE C. ASIS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF BILIRAN PROVINCE, BRANCH 16, AND JAIME ABORDO,...

G.R. No. 173089. August 25, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 filed by the Office of the Solicitor General (OSG), representing the State, seeking to reverse and set aside the June 7, 2006 Resolution[1] of the Court of Appeals (CA), in CA-G.R. SP No. 01289, which dismissed outright its petition for certiorari under Rule 65 for being the wrong remedy.

From the records, it appears that on October 7, 2002, at 12:30 o'clock in the morning, respondent Jaime Abordo (Abordo) was riding his motorcycle on his way home. He was met by private complainants Kennard Majait (Majait), Joeniel Calvez (Calvez) and Jose Montes (Montes). An altercation ensued between them. Abordo shot Majait in the leg while Calvez was hit in the lower left side of his abdomen. Montes escaped unhurt.

Abordo was charged with two (2) counts of attempted murder in Criminal Case Nos. N-2212 and N-2213 and one (1) count of frustrated murder in Criminal Case No. N-2211 before the Regional Trial Court, Biliran Province, Branch 16 (RTC). The trial court found no treachery and evident premeditation. Thus, in its August 29, 2005 Decision,[2] the RTC held Abordo liable only for Serious Physical Injuries for shooting Calvez and Less Serious Physical Injuries with regard to Majait. It also appreciated four (4) generic mitigating circumstances in favor of Abordo. With respect to the complaint of Montes, Abordo was acquitted.

All three complainants moved for a reconsideration regarding the civil aspect. They filed a supplemental motion to include moral damages. Calvez without the conformity of the Provincial Prosecutor, filed a notice of appeal for both the civil and the criminal aspects. For said reason, Calvez later sought withdrawal of his motion for reconsideration and its supplement.

On October 24, 2005, the trial court dismissed Majait's motion for reconsideration while Calvez's motion to withdraw was granted. On said date, the trial court also dismissed Calvez' appeal for not bearing the conformity of the Provincial Prosecutor.

Acting on Chief State Prosecutor Jovencito R. Zuno's Indorsement[3] of the October 11, 2005 letter[4] of Assistant City Prosecutor Nida C. Tabuldan-Gravino, a relative of Calvez, the OSG filed a petition for certiorari under Rule 65 before the CA based on the following grounds:

> GROUNDS FOR THE ALLOWANCE
> OF THE PETITION
> (Petition for Certiorari before the CA)

I

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT HAD NO INTENT TO KILL, IN HOLDING HIM GUILTY OF ONLY SERIOUS PHYSICAL INJURIES AND LESS SERIOUS PHYSICAL INJURIES INSTEAD OF FRUSTRATED MURDER AND ATTEMPTED MURDER IN CRIMINAL CASE NOS. N-2211 AND N-2212, RESPECTIVELY, AND IN ACQUITTING HIM OF THE CRIME CHARGED IN CRIMINAL CASE NO. N-2213.

II

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN APPRECIATING FOUR (4) MITIGATING CIRCUMSTANCES IN FAVOR OF PRIVATE RESPONDENT.[5]

The CA, in the assailed Resolution, dismissed the petition outright. According to the appellate court, the filing of the petition for certiorari was the wrong remedy. As the State was questioning the verdict of acquittal and findings of lesser offenses by the trial court, the remedy should have been an appeal. Moreover, the petition for certiorari placed the accused in double jeopardy. Specifically, the CA wrote:

x x x. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction but an error of law or fact - a mistake of judgment - appeal is the remedy. In view of the improper action taken by the herein petitioner, the instant petition should be dismissed.

Moreover, Section 1, Rule 122 of the 2000 Rules of Criminal Procedure provides that any party may appeal from a judgment or final order unless the accused will be placed in double jeopardy. In the instant petition, the Solicitor General, representing the People of the Philippines is assailing the judgment of the public respondent in finding the accused guilty of lesser crimes tha[n] the ones with which he was charged and of acquitting him in another. It appears to us that the Solicitor General is also representing the interest of the private complainant Calvez when it questioned the dismissal of the latter's Notice of Appeal dated October 10, 2005 with respect to the civil aspect of the case. Although the Solicitor General is allowed to file an appeal under such rule; however, we must point out that in filing this petition for certiorari, the accused is thereby placed in double jeopardy. Such recourse is tantamount to converting the petition for certiorari into an appeal, contrary to the express injunction of the Constitution, the Rules of Court and prevailing jurisprudence on double jeopardy.

We must emphasize that the prosecution cannot appeal a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction because it would place him in double jeopardy. Hence, this petition is dismissible not only on the ground of wrong remedy taken by the petitioner to question an error of judgment but also on the ground that such action places the accused in double jeopardy.[6] [emphases and underscoring supplied]

Not in conformity, the OSG comes to this Court via this petition for review under Rule 45 presenting the following:

GROUNDS RELIED UPON FOR THE ALLOWANCE OF THE PETITION

I

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING OUTRIGHT THE PETITION FOR CERTIORARI SEEKING TO ANNUL THE JOINT JUDGMENT DATED AUGUST 29, 2005 OF HON. ENRIQUE C. ASIS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC OF BILIRAN, BRANCH 16 IN CRIM. CASE NOS. N-2211, N-2212 AND N-2213 WHICH WAS

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> CLEARLY SHOWN TO BE CONTRARY TO THE EVIDENCE PRESENTED AND APPLICABLE LAW AND JURISPRUDENCE.
>
> II
>
> THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN THEREBY AFFIRMING IN TOTO THE PLAINLY ERRONEOUS JUDGMENT DATED AUGUST 29, 2005 OF HON. ENRIQUE C. ASIS, AS PRESIDING JUDGE OF THE RTC OF BILIRAN PROVINCE, BRANCH 16, IN CRIM. CASE NOS. N-2211, N-2212 AND N-2213.[7]

On January 19, 2009, the petition was given due course and the parties were ordered to submit their respective memoranda. The parties complied with the order.

We find that the appellate court erred in dismissing the petition outright.

A petition for certiorari under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable.[8] The rule, however, is not without exception. In several cases,[9] the Court has entertained petitions for certiorari questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in People v. Louel Uy,[10] the Court has held:

> Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for certiorari under Rule 65 of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void. [Emphases and underscoring supplied]

In People v. Laguio, Jr.,[11] where the acquittal of the accused was via the grant of his demurrer to evidence, We pointed out the propriety of resorting to a petition for certiorari. Thus:

> By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the special civil action of certiorari under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via certiorari, the right of the accused against double jeopardy is not violated. [Emphases supplied]

In this petition, the OSG claims that Abordo's acquittal in Criminal Case No. N-2213 was improper. Since appeal could not be taken without violating Abordo's constitutionally guaranteed right against double jeopardy, the OSG was correct in pursuing its cause via a petition for certiorari under Rule 65 before the appellate court. It was a serious error by the CA to have deprived the petitioner of its right to avail of that remedy.

As the case was summarily dismissed on a technicality, the merits of the petition for certiorari were not at all discussed. Thus, the proper recourse would be a remand to the CA.

A review of the records, however, shows that the case need not be remanded to the CA for appropriate proceedings. The OSG's petition for certiorari, which forms part of the records, would not merit a favorable review even if it would be given due course simply because it is bereft of merit. For said reason, We deem that a remand of the case would only prolong the disposition of the case. It is not without precedent. "On many occasions, the Court, in the interest of public service and for the expeditious administration of justice, has resolved actions on the merits, instead of remanding them for further proceedings, as where the ends of justice

would not be sub-served by the remand of the case."[12]

The rule is that "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."[13] The case of Galman v. Sandiganbayan,[14] presents an instructive exception to the rule on double jeopardy, that is, when the prosecution has been denied due process of law. "The rationale behind this exception is that a judgment rendered by the trial court with grave abuse of discretion was issued without jurisdiction. It is, for this reason, void. Consequently, there is no double jeopardy."[15]

A reading of the OSG petition for certiorari filed before the CA, however, fails to show that the prosecution was deprived of its right to due process. Primarily, the OSG petition does not mention or even hint that there was a curtailment of its right. Unlike in Galman, the prosecution in this case was never denied its day in court. Both the prosecution and the defense were able to present their respective evidence, testimonial and documentary. Both parties had their opportunity to cross-examine witnesses and scrutinize every piece of evidence. Thereafter, the trial court exercising its discretion evaluated the evidence before it and rendered its decision. Certainly, there was no mistrial.

The arguments proffered in the said petition call for a review of the evidence and a recalibration of the factual findings. At the outset, the OSG faulted the trial court for giving full faith and credit to the testimonies of Abordo and his witnesses. It wrote:

> In ruling that private respondent had no intent to kill private complainants, respondent judge thus accorded full faith and credit to the testimonies of private respondent and his witnesses Julito Bernadas and Melquiades Palconit. His findings, however, are contrary to law and the evidence. Therefore, he acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[16]

It further pointed out that the CA "failed to notice certain relevant facts which, if properly considered, would justify a different conclusion."[17] Subsequently, in its memorandum, it merely reiterated the purported errors of the trial judge in appreciating and assessing the evidence of both the prosecution and the defense. Apparently, it wants a review of the trial court's judgment which it claimed to be erroneous.

The OSG then proceeded to show how the evidence should have been appreciated by the trial court in its favor and against Abordo to demonstrate that there was intent to kill on his part.

What the OSG is questioning, therefore, are errors of judgment. This, however, cannot be resolved without violating Abordo's constitutionally guaranteed right against double jeopardy. An appellate court in a petition for certiorari cannot review a trial court's evaluation of the evidence and factual findings. Errors of judgment cannot be raised in a Rule 65 petition as a writ of certiorari can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion. In the case of People v. Hon. Tria-Tirona,[18] it was written:

> Petitioner, via a petition for review on certiorari, prays for the nullification and the setting aside of the decision of public respondent acquitting private respondent claiming that the former abused her discretion in disregarding the testimonies of the NBI agents on the discovery of the illegal drugs. The petition smacks in the heart of the lower court's appreciation of the evidence of the parties. It is apparent from the decision of public respondent that she considered all the evidence adduced by the parties. Even assuming arguendo that public respondent may have improperly assessed the evidence on hand, what is certain is that the decision was arrived at only after all the evidence was considered, weighed and passed upon. In such a case, any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. An error of judgment is one in which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave

> abuse of discretion which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. Since no error of jurisdiction can be attributed to public respondent in her assessment of the evidence, certiorari will not lie. [Emphasis supplied]

Summing them all up, the CA clearly erred in dismissing the petition for certiorari filed before it by the OSG on the ground that it was the wrong remedy. There is, however, no need for the remand of the case to the CA as the petition for certiorari, on its face, cannot be given due course.

WHEREFORE, the petition is PARTIALLY GRANTED. The June 7, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 01289, dismissing the petition for certiorari for being the wrong remedy is SET ASIDE. Acting on the petition for certiorari, the Court resolves to DENY the same for lack of merit.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales,[*] Peralta, and Abad, JJ., concur.

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[*]Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated January 2, 2008.

[1] Rollo, pp. 59-63. Penned by Justice Apolinario D. Bruselas, Jr. and concurred in by Justices Isaias P. Dicdican and Agustin S. Dizon.

[2] RTC Decision, Id. at 85, 87, 90-93.

[3] Id. at 235.

[4] Id. at 236-237.

[5] Id. at 238.

[6] Id. at 61-63.

[7] Petition, rollo, p. 19.

[8] People v. CA, 468 Phil. 1 (2004); cited in People v. Uy, G.R. No. 158157, September 30, 2005, 471 SCRA 668, 679-680.

[9] Jerome Castro v. People, G.R. No. 180832, July 23, 2008, 559 SCRA 676; Yuchengco v. Court of Appeals, 427 Phil. 11 (2002); and Galman v. Sandiganbayan, 228 Phil 43 (1986).

[10] G.R. No. 158157, September 30, 2005, 471 SCRA 668, 680-681.

[11] G.R. No. 128587, March 16, 2007, 518 SCRA 393, 408-409.

[12] Metro Eye Security, Inc. v. Salsono, G.R. No. 167637, September 28, 2007, 534 SCRA 375, 385.

[13]People v. Laguio, supra note 11 at 408, citing San Vicente v. People, 441 Phil. 139 (2002).

[14] 228 Phil 42 (1986).

[15] Jerome Castro v. People, supra note 9 at 684.

[16] OSG Petition for Certiorari before the CA, rollo, p. 252.

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[17] Petition, id. at 26.

[18] G.R No. 130106, July 15, 2005, 463 SCRA 462, 470.

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