

ANTONIO LEJANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 176389. January 18, 2011

Ponente: ABAD, J.

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ABAD, J.:

On December 14, 2010 the Court reversed the judgment of the Court of Appeals (CA) and acquitted the accused in this case, Hubert Jeffrey P. Webb, Antonio Lejano, Michael A. Gatchalian, Hospicio Fernandez, Miguel Rodriguez, Peter Estrada, and Gerardo Biong of the charges against them on the ground of lack of proof of their guilt beyond reasonable doubt.

On December 28, 2010 complainant Lauro G. Vizconde, an immediate relative of the victims, asked the Court to reconsider its decision, claiming that it "denied the prosecution due process of law; seriously misappreciated the facts; unreasonably regarded Alfaro as lacking credibility; issued a tainted and erroneous decision; decided the case in a manner that resulted in the miscarriage of justice; or committed grave abuse in its treatment of the evidence and prosecution witnesses." [1]

But, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy. The Constitution provides in Section 21, Article III, that:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. x x x

To reconsider a judgment of acquittal places the accused twice in jeopardy of being punished for the crime of which he has already been absolved. There is reason for this provision of the Constitution. In criminal cases, the full power of the State is ranged against the accused. If there is no limit to attempts to prosecute the accused for the same offense after he has been acquitted, the infinite power and capacity of the State for a sustained and repeated litigation would eventually overwhelm the accused in terms of resources, stamina, and the will to fight.

As the Court said in *People of the Philippines v. Sandiganbayan*: [2]

[A]t the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm the government with a potent instrument of oppression. The provision therefore guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the government to a single criminal proceeding to vindicate its very vital interest in the enforcement of criminal laws. [3]

Of course, on occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special

civil action of certiorari under Rule 65.[4]

Here, although complainant Vizconde invoked the exceptions, he has been unable to bring his pleas for reconsideration under such exceptions. For instance, he avers that the Court "must ensure that due process is afforded to all parties and there is no grave abuse of discretion in the treatment of witnesses and the evidence." [5] But he has not specified the violations of due process or acts constituting grave abuse of discretion that the Court supposedly committed. His claim that "the highly questionable and suspicious evidence for the defense taints with serious doubts the validity of the decision" [6] is, without more, a mere conclusion drawn from personal perception.

Complainant Vizconde cites the decision in *Galman v. Sandiganbayan* [7] as authority that the Court can set aside the acquittal of the accused in the present case. But the government proved in *Galman* that the prosecution was deprived of due process since the judgment of acquittal in that case was "dictated, coerced and scripted." [8] It was a sham trial. Here, however, Vizconde does not allege that the Court held a sham review of the decision of the CA. He has made out no case that the Court held a phony deliberation in this case such that the seven Justices who voted to acquit the accused, the four who dissented, and the four who inhibited themselves did not really go through the process.

Ultimately, what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, et al's conviction. The judgment acquitting Webb, et al is final and can no longer be disturbed.

WHEREFORE, the Court DENIES for lack of merit complainant Lauro G. Vizconde's motion for reconsideration dated December 28, 2010.

For essentially the same reason, the Court DENIES the motions for leave to intervene of Fr. Robert P. Reyes, Sister Mary John R. Mananzan, Bishop Evangelio L. Mercado, and Dante L.A. Jimenez, representing the Volunteers Against Crime and Corruption and of former Vice President Teofisto Guingona, Jr.

No further pleadings shall be entertained in this case.

SO ORDERED.

Corona, C.J., Leonardo-De Castro, and Villarama, Jr., JJ., vote to grant the M.R.

Carpio Morales, Peralta, Bersamin, Perez, and Mendoza, JJ., concur.

Carpio, J., no part, prior inhibition.

Velasco, Jr., J., no part due to relationship to a party.

Nachura, J., no part; filed pleading as Sol Gen.

Brion, J., same vote as J. Villarama.

Del Castillo, J., no part.

Sereno, J., see concurring opinion.

[1] Private Complainant's Motion for Reconsideration, p. 8.

[2] G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185.

[3] *Id.* at 207.

[4] *Castro v. People*, G.R. No. 180832, July 23, 2008, 559 SCRA 676, 683-684.

[5] *Supra* note 1, at 7.

[6] *Id.* at 12.

[7] 228 Phil. 42 (1986).

[8] *Id.* at 89.

CONCURRING OPINION

SERENO, J.:

The Motion for Reconsideration assails the majority for failing to uphold the trial court's conclusions. The simple fact is that the evidence tends to demonstrate that Hubert Webb is innocent. The simple fact also is that the evidence demonstrates that not only had Jessica Alfaro failed to substantiate her testimony, she had contradicted herself and had been contradicted by other more believable evidence. The other main prosecution witnesses fare no better. This is the gist of the Decision sought to be reconsidered. While this Court does not make a dispositive ruling other than a pronouncement of "guilt" or "non-guilt" on the part of the accused, the legal presumption of innocence must be applied in operative fact. It is unfortunate that statements were made that sought to dilute the legal import of the majority Decision. A pronouncement of this Court that the accused has not been proven to be guilty beyond reasonable doubt cannot be twisted to mean that this Court does not believe in the innocence of the accused when the reasoning of the Court demonstrates such belief. A careful reading of the majority Decision, as well as the concurring opinions, is required to determine whether the accused were acquitted solely because there was lingering doubt as to their guilt of the crime charged or whether the accused were acquitted not only because of doubt as to their guilt but also because the evidence tends to establish their innocence. In the case of Hubert Webb, the evidence tends to establish his innocence. On the other hand, the testimony of Jessica Alfaro was wholly rejected by the majority as not believable.

In his Motion for Reconsideration, private complainant asserts that this Court should have respected the trial court's resolve to give full credence to the testimony of Jessica Alfaro. While as a general rule, a trial judge's findings as to the credibility of a witness are entitled to utmost respect as he has had the opportunity to observe their demeanor on the witness stand, this holds true only in the absence of bias, partiality, and grave abuse of discretion on the part of the judge.^[1] The succeeding discussion demonstrates why this Court has no choice but to reject the trial court's findings.

The mistaken impression that Alfaro was a credible witness was, in significant measure, perpetrated by the trial court's inappropriate and mismatched attribution of rights to and duties of the accused vis-a-vis the principal witness in a criminal proceeding. As discussed in the promulgated Decision of the Court in this case, the trial court failed to recognize the accused's right to be presumed innocent. Instead, the trial court's Decision indicated a preconceived belief in the accused's guilt, and as a corollary, that witness Alfaro was telling the truth when she testified to the accused's guilt. In excessively protecting Alfaro, the trial court improperly ascribed to her the right reserved for an accused. It also unreasonably imposed severe limitations on the extent of the right of the defense to cross-examine her.

During Alfaro's cross examination, the defense counsel tried to impeach her credibility by asking her about her 28 April 1995 Affidavit, which markedly differs from her 22 May 1995 Affidavit. The prosecution objected and moved that the questions be expunged from the records on the basis of the inadmissibility of the evidence

obtained allegedly without the assistance of counsel, pursuant to Article III Section 12(1) and (3) of the 1987 Constitution.[2] This constitutional right, however, is a right reserved solely for the accused or a "person under investigation for the commission of an offense." The prosecution's objection had no legal basis because Alfaro was clearly not the accused in the case. Alfaro was a witness who had a legal duty to "answer questions, although his (her) answer may tend to establish a claim against him (her)."[3] Notwithstanding this, the lower court sustained the prosecution's objection.

The law does not confer any favorable presumption on behalf of a witness. It is precisely due to the absence of any legal presumption that the witness is telling the truth that he/she is subjected to cross-examination to "test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue." [4] The Rules provide that "the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom." [5] A witness may be impeached "by contradictory evidence, by evidence that his general reputation for truth, honesty, or integrity is bad, or by evidence that he has made at other times statements inconsistent with his present testimony." [6]

The right to cross-examine a witness is a matter of procedural due process such that the testimony or deposition of a witness given in a former case "involving the same parties and subject matter, may be given in evidence against the adverse party" provided the adverse party "had the opportunity to cross-examine him." [7]

Notwithstanding the right of the accused to fully and freely conduct a thorough cross examination, the trial court set undue restrictions on the defense counsel's cross examination of Alfaro, effectively denying the accused such right. The length of the cross-examination is not as material in the determination of the credibility of the witness as much as whether such witness was fully tested by the defense when demanded to be tested on cross-examination - for honesty by contradictory evidence of a reputation for dishonesty, for inconsistency, or for possible bias or improper motive.

To establish Alfaro's bias and motive for testifying in the case, the defense counsel sought to ask Alfaro about her brother, Patrick. Alfaro admitted that Patrick was a drug addict and had been arrested once by the NBI for illegal possession of drugs, but that he was presently in the United States. The theory of the defense was that Patrick's liberty was part of a deal that Alfaro had struck with the NBI in exchange for her services. When defense counsel inquired about the circumstances of Patrick's departure for the United States, the prosecution objected to the questions on the ground of irrelevance. Respondent judge sustained the objection, thus foreclosing a significant avenue for testing Alfaro's "freedom from interest or bias."

The defense counsel tried to cross-examine Alfaro regarding her educational attainment as stated in her sworn statements. The defense presented her college transcript of records to prove that she only enrolled for a year and earned nine (9) academic units, contrary to her claim that she finished second year college. Notably, Alfaro misrepresented her educational attainment in both of her affidavits - her 28 April 1995 Affidavit which she claimed was executed without assistance of counsel, and her subsequent 22 May 1995 Affidavit which was admittedly executed with the assistance of counsel. Apparently, Alfaro's lie under oath about her educational attainment persisted even after being given counsel's assistance in the execution of the second affidavit, as well as more time to contemplate the matter. Unfortunately, the lower court sustained the prosecution's objection to the question on the ground of irrelevance when the line of testing could have tested Alfaro's penchant for "accuracy and truthfulness."

Ironically, notwithstanding the trial court's disallowance of the defense's attempts to impeach Alfaro's character, and the rule that "(e)vidence of the good character of a witness is not admissible until such character has been

impeached,"[8] the trial court allowed the prosecution to present Atty. Pedro Rivera[9] to testify positively on Alfaro's character. Worse yet, the trial court disallowed the defense from presenting Atty. Rivera's earlier statement to impeach the latter's credibility; again, this was disallowed on the ground of immateriality. When a proffer of evidence[10] was made by the defense following such disallowance, the trial court struck the proffer from the record on the ground that it was allegedly improper on cross-examination.

The notion that witness Alfaro was able to withstand her cross examination appears sustainable in large part because her cross examination was so emasculated by the trial court's inordinate protection of her, which went so far as to improperly accord her the right reserved for an accused. Taken together with repeated instances of unwarranted exertion of effort to wipe the record clean of some entries that cast doubt on Alfaro's credibility, the trial court's actions show that it had a bias towards upholding the truthfulness of Alfaro's testimony.

The trial court's treatment of documentary evidence also suffered from mismatched ascription - discarding legal presumptions without evidence to the contrary while giving evidentiary weight to unsubstantiated speculation. For instance, in rejecting Webb's alibi defense, the trial court used mere speculation that the accused's family influenced the production of false entries in official documents to defeat the legal presumption of said documents' accuracy and regularity of issuance. Notably, the United States Immigration and Naturalization Service (US INS) Certification, which confirmed that Webb was in the United States from March 1991 until October 1992, was authenticated by no less than the Office of the U.S. Attorney General and the U.S. State Department. Furthermore, this official certification of a sovereign state, having passed through formal diplomatic channels, was authenticated by the Department of Foreign Affairs. As discussed in the main decision, such official documents as the authenticated U.S. INS Certification enjoy the presumption of accuracy of the entries therein.[11] Official documents are not infallible, but the presumption that they are accurate can only be overcome with evidence. Unfortunately, in the mind of the trial court, pure conjecture and not hard evidence was allowed to defeat a legal presumption.

Clearly, the trial court's decision in this case was, in significant measure, the product of switched attributions as to who should enjoy certain rights and what should be presumed under the law. This behavior on the part of the trial court and the effect it had on the factual conclusions on the credibility of Jessica Alfaro and on the presence of Hubert Webb in the Philippines at the time of the commission of the crime cannot be upheld.

[1] *People v. Dizon*, G.R. Nos. 126044-45, 2 July 1999, 309 SCRA 669.

[2] "SEC. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

xxx xxx xxx

"(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him."

[3] Rules of Court, Rule 132, Section 3.

[4] Rules of Court, Rule 132, Section 6.

[5] Rules of Court, Rule 132, Section 6.

[6] Rules of Court, Rule 132, Section 11.

[7] Rules of Court, Rule 130, Section 47.

[8] Rules of Court, Rule 132, Section 14.

[9] Notably, in the Motion for Reconsideration in Intervention filed by the Volunteers Against Crime and Corruption (VACC), Fr. Roberto Reyes, Sister Mary John Mananzan and Bishop Evangelio Mercado, they attach a copy of Atty. Pedro Rivera's Affidavit to once again resuscitate Alfaro's credibility.

[10] Rules of Court, Rule 132, Section 40 provides that "(i)f documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the same and other personal circumstances of the witness and the substance of the proposed testimony."

[11] Citing *Antillon v. Barcelona*, 37 Phil. 148 (1917).

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