

SPO2 ROLANDO JAMACA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 183681. July 27, 2015

Ponente: PERALTA, J.

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PERALTA, J.:

This resolves the petition for review on certiorari seeking the reversal of the Decision[1] of the Court of Appeals (CA) promulgated on May 26, 2004 and the Resolution[2] dated June 19, 2008 in CA G.R. CR No. 23887. The CA affirmed the judgment of the Regional Trial Court of Cagayan de Oro City (RTC), finding petitioner SPO2 Rolando Jamaca guilty beyond reasonable doubt of Grave Threats in Criminal Case No. 97-1598.

The antecedent facts are as follows:

Private complainant Atty. Emelie Bangot filed a complaint for Grave Threats against petitioner with the Office of the Deputy Ombudsman for the Military, docketed as OMB-MIL-CRIM-97-0754. He likewise filed a similar complaint before the Office of the City Prosecutor of Cagayan de Oro City.

In a Resolution[3] dated January 26, 1998, the Office of the Deputy Ombudsman for the Military dismissed the complaint on the ground that the accusation against petitioner was unfounded, based solely on the statement of one Rustom Roxas that there were no threatening words uttered by petitioner. A petition for certiorari was filed with this Court to assail said ruling of the Office of the Deputy Ombudsman for the Military, but the same was dismissed in a Resolution dated July 29, 1998, which read, thus:

The petition [or] for certiorari is dismissed for utter lack of merit, having failed to comply with well nigh all the relevant requisites laid down by law, prescinding from the obvious proposition that the Supreme Court does not review findings and conclusions of investigators conducting a preliminary inquiry or investigation into charges of a crime.[4]

On the other hand, private complainant's complaint before the Office of the City Prosecutor prospered and led to the filing of an Information against petitioner. He was charged with grave threats defined and penalized under paragraph 1 of Article 282 of the Revised Penal Code allegedly committed as follows:

That on [or] about July 22 1997 in the evening, at Kalambaguhan/Burgos Streets, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and moved by personal resentment which he entertained against Atty. Emelie P. Bangot, Jr., did then and there willfully, unlawfully and feloniously threaten the latter with the infliction upon him of a wrong amounting to a crime subject to a condition, by threatening to kill the offended party thus uttering or shouting words in the presence of, and within the hearing distance of Jay Jay R. Bangot (son of offended party) as follows, to wit:
KUNG MATANGTANG AKO SA TRABAHON, BUAKON KO ANG ULO NI ATTY. BANGOT ...

which means in English: "If I will loss my work I will break the head of Atty. Bangot ...", or words of similar import, directed to the said offended party, Atty. Emelie P. Bangot, Jr., without however attaining accused's purpose, thereby casting fear upon offended party's person and endangering his life.

Contrary to and in violation of Art. 282, paragraph I, of the Revised Penal Code.[5]

Upon arraignment, petitioner pleaded not guilty and trial then ensued. The prosecution presented three witnesses, including the son of private complainant, who all testified that while petitioner was at the house of Rustom Roxas, they all heard petitioner utter words threatening to cause private complainant Atty. Bangot grave bodily harm. On the other hand, petitioner insisted that he went to the house of Rustom Roxas, a relative by affinity of Atty. Bangot, to ask Rustom Roxas to mediate and reconcile him (petitioner) with Atty. Bangot. Petitioner denied that he ever mentioned any threatening words against Atty. Bangot. Elisea Jamaca, petitioner's wife, corroborated petitioner's testimony. The prosecution then presented Phoebe Roxas, the wife of Rustom Roxas, as rebuttal witness. She testified that she was in the very same room and clearly heard petitioner utter words to the effect that if he (petitioner) loses his job, he will break the head of Atty. Bangot. She also said that Jay Bangot, the son of private complainant, was also there in their house, sitting only about two and a half meters away from petitioner, when petitioner made the threats against Atty. Bangot.

The trial court, ascribing greater credibility to the testimony of each of the prosecution witnesses, ruled that the evidence clearly established the guilt of petitioner. The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused SPO2 Rolando Jamaca guilty beyond reasonable doubt as principal of the offense of GRAVE THREATS defined and punishable under paragraph 2 of Art. 282 of the Revised Penal Code without attendance of any aggravating or mitigating circumstances. Consequently, pursuant to said law, he is hereby sentenced with the accessories of the law as provided by Art. 44 of the Revised Penal Code, to an imprisonment of two (2) months and one (1) day to be served at the City Jail, Cagayan de Oro City and to pay a fine in the sum of Five Hundred Pesos (500.00) with subsidiary imprisonment in case of insolvency computed at the rate of one (1) day for each eight pesos but in no case will it exceed one-third of the term of the sentence.

No pronouncement as to the credit of preventive imprisonment since accused immediately put up a bond for his temporary liberty without waiting for his arrest.

SO ORDERED.[6]

The trial court's Decision was appealed to the CA and, on May 26, 2004, the CA promulgated a Decision affirming in toto petitioner's conviction for the crime of Grave Threats. Petitioner's motion for reconsideration was denied by the CA per Resolution dated June 19, 2008.

Petitioner then filed his Petition for Review on Certiorari and a Supplemental Petition for Review on Certiorari with this Court. The only issue presented in the original petition is whether the CA should have dismissed the petition outright and ruled that the RTC had no jurisdiction to take cognizance of the case because private complainant was guilty of forum shopping, having filed similar complaints before both the Office of the Deputy Ombudsman and the Office of the City Prosecutor. Subsequently, in his Supplemental Petition, petitioner raised additional issues, to wit:

I

RESPONDENT COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN NOT APPLYING THE DOCTRINE OF RES JUDICATA AS THE CONVICTION OF THE ACCUSED PETITIONER FOR THE CRIME OF GRAVE THREATS BY THE TRIAL COURT HAD LONG BEEN DISMISSED BY THE OMBUDSMAN FOR THE MILITARY IN ITS RESOLUTION OF JANUARY 26, 1998 FOR EXACTLY THE SAME CRIME, WHICH WAS UPHELD BY THIS HONORABLE COURT IN G.R. NO. 134664 WHEN IT DISMISSED A PETITION FOR CERTIORARI OF SUCH DISMISSAL AND THAT ENTRY OF JUDGMENT HAD BEEN MADE ON DECEMBER 1, 1998, HENCE, IF THIS ERRONEOUS

CONVICTION IS NOT REVERSED IN THIS PETITION FOR REVIEW THE SAME WOULD [BE] TANTAMOUNT TO VIOLATING THE CONSTITUTIONAL RIGHTS OF THE ACCUSED AGAINST DOUBLE JEOPARDY.

II

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE INFORMATION FILED BY THE OFFICE OF THE CITY PROSECUTOR OF CAGAYAN DE ORO IS NULL AND VOID FROM THE VERY BEGINNING FOR LACK OF JURISDICTION AS THE OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY HAD ALREADY DISMISSED THE CASE AFTER IT TOOK COGNIZANCE OF THE SAME, THE PETITIONER BEING A POLICE OFFICER.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THERE WAS NO GRAVE THREATS BECAUSE THE ALLEGATIONS IN THE COMPLAINT ARE MERELY HEARSAY.[7]

The petition is bereft of merit.

It should be borne in mind that for a claim of double jeopardy to prosper, petitioner has to prove that a first jeopardy has attached prior to the second. As stated in *Braza v. Sandiganbayan*,[8] "[t]he first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent." [9] In this case, the complaint before the Office of the Deputy Ombudsman for the Military was dismissed as early as the preliminary investigation stage, thus, there was as yet, no indictment to speak of. No complaint or Information has been brought before a competent court. Hence, none of the aforementioned events has transpired for the first jeopardy to have attached.

In *Vincoy v. Court of Appeals*,[10] which is closely analogous to the present case, the private complainant therein initially filed a complaint with the Office of the City Prosecutor of Pasay City, but said office dismissed the complaint. Private complainant then re-filed the complaint with the Office of the City Prosecutor of Pasig City. The Office of the Prosecutor of Pasig City found probable cause and filed the Information against the accused therein. In said case, the Court categorically held that:

The dismissal of a similar complaint x x x filed by [private complainant] before the City Prosecutor's Office of Pasay City will not exculpate the petitioner. The case cannot bar petitioner's prosecution. It is settled that the dismissal of a case during its preliminary investigation does not constitute double jeopardy since a preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties' evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof. For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal.[11]

The foregoing ruling was reiterated in *Trinidad v. Office of the Ombudsman*,[12] where the Court has categorically ruled that since the preliminary investigation stage is not part of the trial, the dismissal of a case during preliminary investigation would not put the accused in danger of double jeopardy in the event of a re-investigation or the filing of a similar case. An investigating body is not bound by the findings or resolution of another such office, tribunal or agency which may have had before it a different or incomplete set of evidence than what had been presented during the previous investigation.[13] Therefore, petitioner's indictment pursuant to the findings of the Office of the City Prosecutor, and his eventual conviction for the crime of grave threats, has not placed him in double jeopardy.

As to petitioner's argument that the information filed by the Office of the City Prosecutor is null and void for lack

of jurisdiction as the Office of the Deputy Ombudsman for the Military had already dismissed the case, the same is likewise tenuous. In *Flores v. Montemayor*,^[14] the Court clarified that the Ombudsman's jurisdiction to investigate public officers and employees as defined under Section 15 of R.A. No. 6770 is not exclusive, and explained, thus:

This power of investigation granted to the Ombudsman by the 1987 Constitution and The Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies, such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local Sanggunians to investigate complaints against local elective officials.^[15]

Petitioner's argument that the CA should have dismissed the petition outright because private complainant committed forum shopping by filing similar complaints with the Office of the Ombudsman for the Military and the Office of the City Prosecutor, should not be given consideration. The Court stated in *De Guzman v. Ochoa*,^[16] that failure to comply with the requirements on the rule against forum shopping is not a ground for the *motu proprio* dismissal of the complaint because the rules are clear that said issue shall cause the dismissal of the case only upon motion and after hearing.^[17] More importantly, as the Court held in *S.C. Megaworld Construction and Development Corporation v. Parada*,^[18] to wit:

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.

xxx xxx xxx

In *Young v. John Keng Seng*, it was also held that the question of forum shopping cannot be raised in the CA and in the Supreme Court, since such an issue must be raised at the earliest opportunity in a motion to dismiss or a similar pleading. The high court even warned that [i]nvoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action x x x.^[19]

With regard to the sufficiency of the evidence presented by the prosecution, the Court has time and again abided by the principle that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. Thus, generally, the Court will not recalibrate and reexamine evidence that had been analyzed and ruled upon by the trial court and affirmed by the CA. Moreover, the supposed inconsistencies of witnesses in recounting the wordings of the threats uttered by petitioner, are much too trivial and inconsequential to put a dent on said witnesses' credibility. As ruled in *People v. Cabtalan*,^[20] "[m]inor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime."^[21] Both the trial court and the CA found the prosecution witnesses' candid and straight forward testimony to be worthy of belief and this Court sees no reason why it should not conform to the principle reiterated in *Medina, Jr. v. People*^[22] that:

Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing

the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[23]

The records of this case, particularly the testimonies of the witnesses, reveal no outstanding or exceptional circumstance to justify a deviation from such long-standing principle. There is no cogent reason to overturn the courts' ruling that the prosecution evidence, is worthy of belief. Thus, prosecution evidence established beyond any reasonable doubt that petitioner is indeed guilty of grave threats.

WHEREFORE, the petition is DENIED, and the Decision of the Court of Appeals dated May 26, 2004 and the Resolution dated June 19, 2008 in CA-G.R. CR No. 23887 are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Villarama, Jr., Perez,[*] and Jardeleza, JJ., concur.

August 18, 2015

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on July 27, 2015, a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 18, 2015 at 1:15 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

[1] Penned by Associate Justice Romulo V. Borja, with Associate Justices Lucenito N. Tagle and Mariflor Punzalan-Castillo, concurring; rollo, pp. 26-33.

[2] Penned by Associate Justice Romulo V. Rorja, with Associate Justices Mario V. Lopez and Elihu A. Ybanez, concurring; rollo, pp. 16-19.

[3] Rollo, pp. 47-48.

[4] Id. at. 49.

[5] CA rollo, pp. 18-19.

[6] Rollo, pp. 45-46.

[7] Id. at 61-62.

[8] G.R. No. 195032, February 20, 2013, 691 SCRA 471.

[9] Braza v. Sandiganbayan, supra.

[10] G.R. No. 156558, June 14, 2004, 432 SCRA 36.

- [11] Vincoy v. Court of Appeals, *supra*, at 40.
- [12] 564 Phil. 382, 389 (2007).
- [13] Vincoy vs. Court of Appeals, *supra* note 10.
- [14] 666 Phil. 393 (2011).
- [15] Flores v. Montemayor, *supra*, at 402. (Emphasis in the original)
- [16] 664 Phil. 107 (2011).
- [17] De Guzman v. Ochoa, *supra*, at 114.
- [18] G.R. No. 183804, September 11, 2013, 705 SCRA 584.
- [19] S.C. Megaworld Construction and Development Corporation v. Parada, *supra*, at 594-597.
- [20] G.R. No. 175980, February 15, 2012, 666 SCRA 174.
- [21] People v. Cabtalan, *supra*, at 168.
- [22] G.R. No. 161308, January 15, 2014, 713 SCRA 311.
- [23] Medina, Jr. v. People, *supra*, at 320.

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