

HON. JUDGE JESUS B. MUPAS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 112 AND CARMELITA F. ZAFRA, CHIEF ADMINISTRATIVE OFFICER, DSWD, PETITIONERS, VS. PEOPLE OF THE PHILIPPIN...

G.R. No. 189365. October 12, 2011

Ponente: SERENO, J.

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SERENO, J.:

In this Petition for Review on Certiorari under Rule 45, private petitioner seeks the reversal of the Decision[1] dated 19 March 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 105199. The CA Decision reversed and set aside the Orders[2] dated 19 December 2007 and 2 June 2008 of the Regional Trial Court of Pasay City (Branch 112), granting her demurrer to evidence in Criminal Case Nos. 02-0371 and 02-0372. Private petitioner also assails the CA Resolution dated 28 August 2009, denying her Motion for Reconsideration.

As the records and the CA found, private petitioner Carmelita F. Zafra (petitioner Zafra) was Supply Officer V[3] of the Department of Social Welfare and Development (DSWD). On 14 November 1998, she arranged for the withdrawal for replacement, of two hundred (200) cartons of Bear Brand Powdered Milk that were nearing their expiry date. She made the arrangement for their withdrawal through DSWD personnel Marcelina Beltran, Administrative Officer III; and Manuelito Roga, Laborer 1.[4]

Petitioner Zafra instructed Marcelina Beltran to have someone from the DSWD Property Division withdraw the 200 cartons of milk from the DSWD-Villamor Airbase Relief Operation Center (DSWD-VABROC) on 14 November 1998. Beltran relayed this instruction to Roga. On the appointed date, however, no one from the Property Division arrived to pick up the milk cases. Instead, three unidentified persons on board a four-wheeler truck came and hauled the 200 cases of milk. One of the three persons who came to pick up the milk cases at the DSWD-VABROC premises introduced herself as Ofelia Saclayan to Roga, the only DSWD employee present at that time.[5] Saclayan turns out to be the sister of Zafra. The 200 cases of milk withdrawn by Saclayan and her unidentified companions were valued at three hundred six thousand seven hundred thirty-six pesos (P306,736).[6]

An internal investigation was conducted by the DSWD on the persons involved in the loss of the milk cases. On 06 August 1999, the investigating committee of the DSWD issued a Memorandum[7] entitled "Report and Recommendation on the Loss of the Two Hundred (200) Cases of Bear Brand Powdered Milk from DSWD-VABROC." In brief, the committee report dismissed petitioner Zafra and her co-employees Beltran and Roga, whom they implicated in the loss of the milk cases. The committee found substantial evidence to hold petitioner Zafra guilty of dishonesty and "negligence of duty." [8]

The report of the DSWD investigating committee finding petitioner Zafra and her co-employee Beltran guilty of dishonesty and negligence of duty was appealed to the Civil Service Commission (Commission). On 03 December 1999, the Commission promulgated Resolution No. 992652,[9] which slightly modified the findings of the committee. The Resolution, while absolving petitioner Zafra of the charge of dishonesty, found her guilty of

simple neglect as follows:

The Commission has noted, however, that Zafra is not that entirely innocent. For the records disclose that it was she who made representation with the MEGA Commercial, the supplier of said milk, to withdraw and replace those cases of milk that are nearing their expiry dates. Surprisingly, however, after November 14, 1998, when the 200 milk cases of milk were actually withdrawn from VABROC she never made any contact with MEGA Commercial as to what further steps to take on the case, such as to retrieve the loss thereof and have these replaced by the company. Neither did she make any further inquiry as to the condition of milk from VABROC. This unnatural inaction or callousness displayed by Zafra and her utter apathy in the performance of her official functions calls for the imposition of sanctions on her.

... ..

Being both government employees, Zafra and Beltran are required to perform their duties and functions with the highest degree of responsibility, integrity, loyalty and efficiency. And since both of them failed on this score, they must suffer the consequences of their negligence.

WHEREFORE, the respective appeals of Carmelita F. Zafra and Marcelina M. Beltran are hereby dismissed for want of merit. They are however, found guilty only of simple Neglect of Duty for which they are each imposed the penalty of six (6) months suspension without pay. The appealed decision is thus modified accordingly.

Quezon City, December 03, 1999.[10]

On 15 February 2002, the Ombudsman filed two Informations with the Regional Trial Court of Pasay (RTC-Pasay) against petitioner Zafra, Beltran and Roga, docketed as Criminal Case Nos. 02-0371 and 02-0372.

Under Criminal Case No. 02-0371, petitioner Zafra and her co-accused Beltran and Roga were charged with violating Section 3 (e) of Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act." The Information filed in this case reads:

The undersigned Prosecutor, Office of the Ombudsman hereby accuses Marcelina M. Beltran, Carmelita Zafra, Manuelito T. Roga and Ofelia Saclayan for Violation of Section 3 (e) of RA 3019, as amended, committed as follows:

That on or about 13 November 1998, or for sometime, prior, or subsequent thereto, in Pasay City, and within the jurisdiction of this Honorable Court, accused Marcelina M. Beltran, Carmelita F. Zafra, Carmelito T. Roga (sic), Administrative Officer III, Supply Officer V, and Laborer I, respectively of the Department of Social Welfare and Development, while in the performance of their official duties, and in connivance with Ofelia Saclayan, a private respondent, with evident bad faith, did then and there, wilfully, unlawfully, and criminally, cause damage or undue injury to the government, particularly the Department of Social Welfare and Development in the amount of Php 306,736.00, by making it appear that the 200 cases of Bear Brand Powdered Milk stocked at the DSWD Villamor Airbase Relief Operation Center (DSWD-VABROC) are about to expire and need to be changed, and thereafter, without complying with the standard operating procedure in withdrawing goods from the bodega, did then and there arrange for the immediate withdrawal of the subject goods on the next day which was a Saturday, a non-working day, and appropriate the said goods for themselves.

CONTRARY TO LAW.[11]

Petitioner Zafra, Beltran and Roga were charged with malversation under Article 217 of the Revised Penal Code in Criminal Case No. 02-0372. The Information reads:

The undersigned Ombudsman Prosecutor, Office of the Ombudsman hereby accuses Carmelita Zafra,

Marcelina M. Beltran Manuelito T. Roga and Ofelia Saclayan for Malversation under Article 217 of the Revised Penal Code, as amended, committed as follows:

That on or about 13 November 1998, or for sometime prior, or subsequent thereto, in Pasay City, and within the jurisdiction of this Honorable Court, accused Marcelina M. Beltran, Administrative Officer III of the Department of Social Welfare and Development, Villamor Airbase Relief Operation Center (DSWD-VABROC), an accountable public officer by virtue of her being the custodian of the goods inside the DSWD-VABROC bodega, in connivance with Carmelita F. Zafra, and Manuelito T. Roga, Supply Officer IV and Laborer I, respectively of the Department of Social Welfare and Development and with the indispensable cooperation of Ofelia T. Saclayan, a private respondent, did then and there, wilfully, unlawfully, and feloniously, cause the unauthorized withdrawal of the 200 cases of Bear Brand Powdered Milk, a public property owned by the DSWD stock[ed] at VABROC, and thereafter, did then and there appropriate the said goods for themselves to the prejudice of the DSWD in the amount of Php 306,736.00.

CONTRARY TO LAW.[12]

The cases against petitioner Zafra and her co-accused were raffled to Branch 112 of RTC-Pasay. Upon arraignment, they pleaded "not guilty" to the charges.

On 06 August 2003, the pretrial of the case was conducted, attended by only petitioner Zafra and Beltran.[13] Thereafter, a joint trial for Criminal Case Nos. 02-0371 and 02-0372 ensued.

During the trial on the merits, the prosecution presented four witnesses to build up its case. The prosecution presented Consolacion Obrique dela Cruz, a utility worker at the DSWD Property and Supply; Atty. Nelson Todas, former DSWD Legal Officer V; Ruby Maligo Cresencio, the operations officer of Mega Commercial Trading, which supplied the stolen milk cases to DSWD; and Isidro Tuastumban, a security guard posted at the DSWD lobby at the time the incident happened.

After the prosecution rested its case, petitioner Zafra filed a Motion for Demurrer to Evidence.[14] She alleged therein that the prosecution failed to present proof that she and her co-accused had wilfully, unlawfully, and feloniously caused the withdrawal of the 200 cases of Bear Brand Powdered Milk and appropriated these for themselves to the prejudice of DSWD. Thus, she concluded that the prosecution failed to establish the elements of the crime of malversation under Art. 217 of the Revised Penal Code. She likewise contended that the prosecution was not able to present proof that she and her co-accused had done so in violation of Section 3 (e) of R. A. 3019.

The lower court required the prosecution to comment on petitioner Zafra's demurrer to evidence. In its Comment,[15] the prosecution contradicted the allegations therein and claimed to have established and proved the elements of the crimes as charged against petitioner and her co-accused. It also alleged that it was able to establish conspiracy among the accused and had evidence to show that petitioner Zafra caused the withdrawal of the goods, subject matter of this case, through her sister -- co-accused Ofelia Saclayan, who was an unauthorized person.

On 19 December 2007, public respondent Judge Mupas issued an Order[16] granting the demurrer to evidence of petitioner Zafra. Public respondent ruled that, after evaluating the testimonies of the witnesses for the prosecution, he found them substantially insufficient to warrant the conviction of petitioner Zafra under the charges filed against her by the Ombudsman. With the grant of her demurrer to evidence, petitioner was acquitted. [17] The decretal portion of the Order reads:

WHEREFORE, the demurrer to evidence is GRANTED.

Consequently, accused CARMELITA ZAFRA y FUENTES is hereby ACQUITTED.

SO ORDERED.

On 28 January 2008, the prosecution, through its private prosecutor, filed a Motion for Reconsideration of the Order dated 19 December 2007 issued by public respondent. On 2 June 2008, the motion was denied for lack of merit.[18]

On 09 September 2008, the People filed with the CA a Petition for Certiorari under Rule 65, assailing the lower court's grant of petitioner Zafra's demurrer to evidence, resulting in her acquittal.[19] The petition, filed through the DSWD, which was represented by its legal officers, raised the following issues:

Whether or not the Honorable Judge committed grave abuse of discretion in denying petitioner's Motion for Reconsideration of its Order granting private respondent's demurrer to evidence;

Whether or not the Honorable Judge committed grave abuse of discretion when he failed to appreciate the evidence of the prosecution providing beyond reasonable doubt private respondent's negligence which resulted to (sic) the unauthorized withdrawal of the 200 cases of Bear Brand Powdered Milk at the VABROC belonging to the government.[20]

The People's Petition for Certiorari was docketed as CA-G.R. SP No. 105199 and was raffled to the appellate court's Special Sixth Division. On 22 September 2008, a Resolution[21] was promulgated, directing petitioner Zafra to file a Comment on the certiorari petition and thereafter instructing the Office of the Solicitor General to file a Reply thereto.

On 06 October 2008, petitioner Zafra, as private respondent in the appeal, filed her Comment and sought to dismiss the Petition for Certiorari instituted by the prosecution.[22] In her Comment, she assailed the appeal of the DSWD for being improper, having been filed directly with the appellate court instead of seeking the intervention of the Office of the Solicitor General (OSG) to act on DSWD's behalf. She also pointed out the lack of authority of the signatory who had executed the certificate of non-forum shopping attached to the petition.

On 06 November 2008, the OSG filed a Manifestation and Motion[23] adopting the Petition for Certiorari filed by the DSWD. It prayed for the relaxation of the Rules on Procedure pertaining to the authority of the person signing the Verification and Certification against forum-shopping attached to the petition filed by the DSWD.

On 19 November 2008, petitioner Zafra filed a Comment/Opposition[24] to the OSG's Manifestation and Motion and moved that it be expunged from the records, as it was filed out of time.

On 23 January 2009, the CA, through its Fourth Division, issued a Resolution[25] granting the OSG's Manifestation and Motion.

On 19 March 2009, the appellate court, through its Third Division, promulgated a Decision[26] granting the People's petition and revoking and setting aside the lower court's Order granting private respondent's demurrer to evidence. In its Decision reversing the trial court's Order, the CA found that public respondent Judge Mupas committed grave abuse of discretion through his grant of private respondent's demurrer, which consequently resulted in her acquittal. Holding that the prosecution was able to present sufficient evidence to prove the elements of the crimes in the Information filed against private respondent, the appellate court ruled as follows:

A careful reading of the 19 December 2007 Order, supra, showed that the court a quo in granting the Respondent's demurrer to evidence relied heavily on the ground that the Petitioner miserably failed to show that the Respondent had any direct participation in the actual withdrawal of the goods. This may be gleaned from the pertinent portion of the 19 December 2007 Order, supra, to wit:

xxx There is no denying that the prosecution, after presenting all its witnesses and documentary evidence has miserably failed to prove the guilt of the accused Carmelita Zafra beyond reasonable doubt. The prosecution has never proven any direct participation of the herein accused to the actual withdrawal of the goods. The

prosecution witnesses presented testified during cross-examination that they have no personal knowledge nor did they see that the accused Carmelita Zafra actually withdraw (sic) or cause[d] the withdrawal of the goods from VABROC. The prosecution proved the relationship between Carmelita Zafra and a Ofelia Saclayan, the fact that Carmelita Zafra coordinated with the prosecution witness Ruby Crescencio for the return of the 200 cases of Bear Brand Powdered Milk which were alleged to be near expiry but it did not proved (sic) that on the day when the goods were withdrawn from VABROC[,] accused Carmelita Zafra had a direct participation for its withdrawal.

... ..

It bears to emphasize that the crime of malversation may be committed either through a positive act of misappropriation of public funds or property or passively through negligence by allowing another to commit such misappropriation. Thus, the Petitioner's alleged failure to prove the Respondent's direct participation in the withdrawal of the 200 cases of milk did not altogether rule out malversation as the *dolo* or *culpa* in malversation is only a modality in the perpetration of the felony.

Besides, even if the Information in Criminal Case No. 02-0372, *supra*, alleges willful malversation, this does not preclude conviction of malversation through negligence if the evidence sustains malversation through negligence. On this score, let US refer to the explicit pronouncement of the Supreme Court in *People v. Uy, Jr.*, thus:

xxx Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense.

Likewise, We find that the court a quo committed grave abuse of discretion in acquitting the Respondent for violation of Section 3(e) of RA 3019 ...

... ..

As earlier discussed, the court a quo acquitted the Respondent of the offense charged mainly because of the alleged lack of any proof of her direct participation in the withdrawal of the 200 cases of Bear Brand powdered milk. However, in view of the People's evidence showing Respondent's inexcusable negligence in the withdrawal of the goods in question, Respondent cannot likewise be acquitted of violation of Section 3(e) of RA 3019 since inexcusable negligence is one of the elements of the said offense.

In sum, We hold that the court a quo committed grave abuse of discretion in granting the Respondent's demurrer to evidence, which resulted to her untimely acquittal.

WHEREFORE, instant Petition is hereby GRANTED. The court a quo's challenged Orders are REVOKED and SET ASIDE. The case is hereby REMANDED to the court a quo for further proceedings.

SO ORDERED.[27]

Petitioner Zafra filed a Motion for Reconsideration[28] dated 31 March 2009 praying that the 19 March 2009 Decision of the CA reversing the lower court's grant of her demurrer to evidence be set aside. She further prayed that the criminal cases filed against her be dismissed with prejudice.

On 09 June 2009, the OSG filed its Comment[29] on the Motion for Reconsideration of petitioner Zafra. It moved for the denial of her Motion for Reconsideration and prayed that the assailed Decision of the Court of Appeals in CA-G.R. SP No. 105199 be affirmed.

The CA, through its former Third Division, issued a Resolution[30] on 28 August 2009 denying petitioner's Motion for Reconsideration. The appellate court found that the issues she raised had been sufficiently considered

and discussed in its 19 March 2009 Decision.

On 19 October 2009, petitioner Zafra filed her Petition for Review on Certiorari[31] under Rule 45 of the Rules on Civil Procedure. She assailed the 19 March 2009 Decision of the Court of Appeals in CA-G.R. SP No. 105199, as well as the 28 August 2009 Resolution denying her Motion for Reconsideration.

We AFFIRM the entire ruling of the Court of Appeals.

After a thorough review of the records of this case, particularly the issues proffered by petitioner, we adopt the findings of the appellate court. We find no reversible error in the ruling which is eloquently supported by existing jurisprudence.[32]

We agree with the CA's disquisition that the lower court's grant of the demurrer to evidence of petitioner Zafra was attended by grave abuse of discretion. The prosecution's evidence was, *prima facie*, sufficient to prove the criminal charges filed against her for her inexcusable negligence, subject to the defense that she may present in the course of a full-blown trial. The lower court improperly examined the prosecution's evidence in the light of only one mode of committing the crimes charged; that is, through positive acts. The appellate court correctly concluded that the crime of malversation may be committed either through a positive act of misappropriation of public funds or passively through negligence by allowing another to commit such misappropriation.[33]

As a general rule, an order granting the accused's demurrer to evidence amounts to an acquittal. There are certain exceptions, however, as when the grant thereof would not violate the constitutional proscription on double jeopardy. For instance, this Court ruled that when there is a finding that there was grave abuse of discretion on the part of the trial court in dismissing a criminal case by granting the accused's demurrer to evidence, its judgment is considered void, as this Court ruled in *People v. Laguio, Jr.*: [34]

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.[35]

In the instant case, having affirmed the CA finding grave abuse of discretion on the part of the trial court when it granted the accused's demurrer to evidence, we deem its consequent order of acquittal void.

Further, we do not find any pronouncement by the trial court on whether the act or omission of petitioner under the circumstances would entail civil liability. Therefore, the CA properly ordered the remand of the case to the lower court for further proceedings to determine whether petitioner is civilly liable for the loss of the milk cartons.

WHEREFORE, we DENY the Petition and affirm in toto the 19 March 2009 Decision of the Court of Appeals and its 28 August 2009 Resolution. Let the name of Judge Jesus B. Mupas be stricken off as petitioner, as such appellation unilaterally made by petitioner Carmelita F. Zafra, is improper.

SO ORDERED.

Carpio, (Chairperson), Brion, Reyes, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated 3 October 2011.

[1] Penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by then CA Associate Justice Martin S. Villarama, Jr. and Associate Justice Rosalinda Asuncion-Vicente.

[2] Penned by Presiding Judge Jesus B. Mupas.

[3] CA rollo, p. 475.

[4] CA rollo, p. 08.

[5] Id.

[6] Id. at 15.

[7] Id. at 120.

[8] Id. at 125.

[9] Id. at 103.

[10] Civil Service Commission Resolution dated 03 December 1999, CA rollo, pp. 114-115.

[11] CA rollo, p.74.

[12] CA rollo, p. 77.

[13] Id. at 116.

[14] Id. at 34.

[15] CA rollo, p. 55.

[16] Id. at 25.

[17] Id. at 29.

[18] Id. at 30.

[19] CA rollo, p. 03.

[20] Id. at 09.

[21] Id. at 150.

[22] Id. at 151.

[23] CA rollo, p. 172.

[24] Id. at 184.

[25] Penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by CA Associate Justices Andres B. Reyes, Jr. and Rosalinda Asuncion-Vicente.

[26] Penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by then Court of Appeals Associate Justice Martin S. Villarama, Jr. and CA Associate Justice Rosalinda Asuncion-Vicente.

[27] CA rollo, p. 205.

[28] Id. at 206.

[29] Id. at 223.

[30] Id. at 233.

[31] Rollo, p. 13.

[32] The Court of Appeals correctly cited the cases of *People v. Uy, Jr.*, G.R. No. 157399, 17 November 2005, 475 SCRA 248 and *People v. Pajaro*, G.R. No. 167860-865, 17 June 2008, 554 SCRA 572 that provides "inexcusable negligence" as an element of the crime of malversation under Section 3 (e) of R.A. 3019.

[33] Rollo, p. 41.

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

[35] Id.

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