

NORBERTO LEE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND ALLIED BANK, RESPONDENTS.

G.R. No. 192274. February 08, 2012

Ponente: MENDOZA, J.

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MENDOZA, J.:

Through this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Norberto Lee (Lee) assails the October 26, 2009 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 106247, which dismissed his petition for certiorari under Rule 65 and affirmed the two (2) questioned interlocutory orders[2] of the public respondent Regional Trial Court, Branch 143, Makati City (RTC), in Criminal Case Nos. 00-1809 to 00-1816.

In the questioned interlocutory orders, the RTC denied Lee's Motion for Document and Handwriting Examination by the National Bureau of Investigation (NBI) and his subsequent motion for the reconsideration of the denial.

The Facts

Lee was the New Account Service Representative of Manager's Check and Gift Check Processor at the Cash Department of Allied Banking Corporation (Allied Bank). The bank filed a complaint against him alleging that, on several occasions, he forged the signatures of responsible bank officers in several manager's checks causing damage and prejudice to it.

After the requisite preliminary investigation, he was charged with Estafa thru Falsification of Commercial Documents which were committed on separate dates involving separate instruments in eight (8) Informations.[3] Except for the details, the Informations were uniformly worded as follows:

That on or about the 20[th] day of May 1999, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused [petitioner], being then the New Account Service Representative of Manager's Check and Gift Check Processor at Cash Department of complainant Allied Banking Corporation, herein represented by Ketty Uy and taking advantage of his position, by means of deceit and false pretenses and fraudulent acts, did then and there willfully, unlawfully and feloniously defraud said complainant in the following manner, to wit: the said accused forged and falsified the signatures of Ketty Uy, Tess Chiong, Manuel Fronda, the approving officers of complainant of the Manager's Check No. MC 0000473205 in the amount of ₱200,500.00 dated May 20, 1999 payable to Noli Baldonado which was issued by complainant-bank in favor of Filway Marketing, Inc., which is a commercial document, by then and there making it appear that the approving officers of complainant-bank had signed and approved the said Manager's Check when in truth and in fact said accused knew, that the approving officers had not participated or intervened in the signing of said manager's check, thereafter the accused encashed the said Manager's Check and represented himself as the payee thereto and received the amount of ₱200,500.00 from complainant-bank and then and there misappropriate, misapply and convert the same to his own personal use and benefit, to the damage and prejudice of complainant Allied Banking Corporation, herein represented by Ketty Uy in the aforesaid amount.

CONTRARY TO LAW.[4]

On February 12, 2007, after the trial had started, Lee filed his Motion for Document and Handwriting Examination by the NBI.[5] In his motion, he claimed, among others, that:

1. The record of the preliminary investigation of the Office of the City Prosecutor of Makati shows that Document Report No. 065-2000, dated 16 June 2000, prepared by the officials of the Crime Laboratory of the National Headquarters of the Philippine National Police at Camp Came, Quezon City, excluded and failed to examine the questioned and standard signatures of the accused in relation to the questioned and standard documents and signatures of the other signatories of the subject Allied Bank checks, application forms and related documents.

x x x x

6. The accused [petitioner] is suspicious of the credibility, neutrality and sincerity of the PNP Crime Laboratory examiners who had submitted the Report because they seemed to have been prevailed upon and influenced by the officers of the Bank to conduct the partial, biased and prejudiced examination without the participation of and said notice to the accused.

7. In the interest of justice and fair play, there is a need for the forensic laboratory of the National Bureau of Investigation (NBI) to conduct a new, confirmatory and independent document and handwriting signature examination of the questioned and standard documents and signatures of the concerned officers and staff of the Bank and the Filway Marketing Inc., on one hand, and of the accused, on the other, in a manner that is complete, comprehensive, fair, neutral, transparent and credible.[6]

On August 22, 2007, the RTC, presided by Judge Tranquil P. Salvador, Jr., denied Lee's motion, stating that:

After due assessment of the assertions of the contending counsels, the Court is disinclined to grant instant motion. First, the trial of the case is already on-going and the accused has the option to utilize the concerned NBI intended witness during the presentation of defense evidence. And second, the Court is called upon to conduct its own evaluation of the questioned signature even with the opinion on the matter coming from an NBI expert. For this purpose, the Court may utilize, among others, the provisions of Sections 20 and 22, Rules of Court, on the rules in authentication of private documents [Rule 132].

"It is also hornbook doctrine that the opinions of handwriting experts, even those from the NBI and the PC, are not binding upon [the] courts.

Handwriting experts are usually helpful in the examination of forged Documents because of the technical procedure involved in analyzing them. But resort to these experts is not mandatory or indispensable to the examination or the comparison of handwriting (Heirs of Severa P. Gregorio vs. CA, 300 SCRA, December 1998) A finding of forgery does not depend entirely on the testimonies of handwriting experts, because the judge must conduct an independent examination on the questioned signature in order to arrive at a reasonable conclusion as to its authenticity. (Boado, 'Notes and Cases on the Revised Penal Code,' 2004 Ed., p. 428)."

Accordingly, defense motion for document and handwriting examination by the NBI is hereby DENIED.[7]

Undaunted, Lee filed his Motion for Reconsideration[8] on September 26, 2007, or two (2) days after the reglementary period of 15 days. For Lee's failure to comply with the rules, the RTC, through Presiding Judge Zenaida T. Galapate-Laguilles, denied his motion for reconsideration.

In his petition before the CA, Lee raised the sole issue of whether or not the two questioned interlocutory orders should be nullified for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction and in the interest of fair play, justice, due process, and equal protection of the law.

Without disputing the late filing of his motion for reconsideration, Lee sought the CA's liberal interpretation of the rules and the need to decide his case on the merits. He insisted that it was legally and physically impossible for him to secure an NBI witness without a compulsory judicial process or order.

In the assailed October 26, 2009 decision, the CA dismissed Lee's petition and affirmed the RTC orders. It stated that procedural rules are not stringently applied when an imperative exists and a grave injustice may be committed if applied otherwise. Since, however, no such imperative and grave injustice appeared in the case, the RTC clearly did not gravely abuse its discretion on this point.

The CA further stated that the RTC did not err in denying petitioner's motion for document and handwriting examination by the NBI, as said motion was intended only to dispute the examination of documents and handwritings conducted by the PNP Crime Laboratory, which was a matter that may be exercised during the presentation of defense evidence.

The CA added that Lee could not claim deprivation of his life, liberty and property with the denial of his motion as both Article III, Section 14(2) of the 1987 Constitution and Rule 115(g) of the Rules of Court guarantee his right to the court's compulsory processes to ensure the attendance of his witnesses and the production of evidence in his behalf.

Lastly, the CA stated that the trial court did not err, much less gravely, when it denied Lee's motion for consideration because it was filed out of time.

Persistent, Lee interposed this petition for review on certiorari raising the following:

ISSUES[9]

1. Whether or not the RTC and the CA gravely erred in ignoring the traditional "doctrine of liberality" in the interpretation and application of mechanical rules of procedure.
2. Whether or not the petitioner was legally entitled to a new and credible NBI document and handwriting examination of all the relevant and material documents relative to the allegedly falsified bank documents and checks with his full participation and submissions, as part of his right to constitutional due process and equal protection rights.
3. Did the RTC and CA gravely err in denying the petitioner's motion for a credible NBI document and handwriting examination?
4. Whether or not the RTC and the CA gravely erred in concluding that the two (2) questioned interlocutory orders had attained "finality," as if they partook of the legal nature of a "final and executory judgment" or of a "final order."

After a thorough review of the records, the Court finds that the RTC did not commit a grave abuse of discretion in denying the subject motion and that the CA was correct in affirming the denial. The RTC did not err either in turning down Lee's motion for reconsideration for being filed two days late.

Contrary to the claim of Lee, the RTC and the CA did not "ignore" the traditional "doctrine of liberality" but merely relied upon the guidelines as to when it is applicable and, after being so guided, chose not to apply it under the existing circumstances. It is true that rules of procedure may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure for persuasive and weights reasons. Concomitant to a liberal interpretation of the rules of procedure, however, there should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[10] In this case, however, Lee did not bother to offer any convincing reason for this Court to relax the rules and just plainly sought its liberal

interpretation. The Court, in *Daikoku Electronics Phils., Inc v. Alberto J. Raza*,^[11] stated:

To be sure, the relaxation of procedural rules cannot be made without any valid reasons proffered for or underpinning it. To merit liberality, petitioner must show reasonable cause justifying its non-compliance with the rules and must convince the Court that the outright dismissal of the petition would defeat the administration of substantive justice.^[12] Utter disregard of the rules cannot be justly rationalized by harping on the policy of liberal construction.^[13]

At any rate, the Court does not perceive any injustice in the denial of Lee's motion. In fact, the RTC wrote that "the accused has the option to utilize the concerned NBI intended witness during the presentation of defense evidence."^[14] When his time comes to present evidence, Lee can utilize the NBI by availing of the coercive power of the court.

The Court had the occasion to rule on an almost similar issue in *Joey P. Marquez v. Sandiganbayan*,^[15] where the Court ordered the Sandiganbayan to act favorably on the motion of the accused therein to cause the NBI to examine the documents already submitted to the court. In said case, the Court wrote:

In this case, the defense interposed by the accused Marquez was that his signatures in the disbursement vouchers, purchase requests and authorizations were forged. It is hornbook rule that as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.

Thus, Marquez bears the burden of submitting evidence to prove the fact that his signatures were indeed forged. In order to be able to discharge his burden, he must be afforded reasonable opportunity to present evidence to support his allegation. This opportunity is the actual examination of the signatures he is questioning by no less than the country's premier investigative force - the NBI. If he is denied such opportunity, his only evidence on this matter is negative testimonial evidence which is generally considered as weak. And, he cannot submit any other examination result because the signatures are on the original documents which are in the control of either the prosecution or the graft court.

At any rate, any finding of the NBI will not be binding on the graft court. It will still be subject to its scrutiny and evaluation in line with Section 22 of Rule 132. Nevertheless, Marquez should not be deprived of his right to present his own defense. How the prosecution, or even the court, perceives his defense to be is irrelevant. To them, his defense may seem feeble and his strategy frivolous, but he should be allowed to adduce evidence of his own choice. The court should not control how he will defend himself as long as the steps to be taken will not be in violation of the rules.

The Marquez ruling, however, cannot be applied in this case. In Marquez, the accused had requested for the examination of the disbursement vouchers, purchase requests and authorization requests by the NBI from the beginning. Records of the case showed that right upon his alleged discovery of the forged signatures, while the case was still with the Office of the Special Prosecutor (OSP), the accused already sought referral of the disbursement vouchers, purchase requests and authorization requests to the NBI for examination. At that stage, OSP denied his plea. In the case at bench, the trial had already started and, worse, the accused's motion for reconsideration was filed beyond the reglementary period.

At any rate, as earlier pointed out, the denial of his motion was without prejudice as the RTC stated that he could utilize the concerned NBI intended witness during the presentation of defense evidence.

WHEREFORE, the petition is DENIED. The October 26, 2009 Decision of the Court of Appeals in CA G.R. SP No. 106247 is AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 41-47. Penned by Associate Justice Vicente S.E. Veloso with Associate Justice Andres B. Reyes, Jr. and Associate Justice Marlene Gonzales-Sison, concurring.

[2] Id. at p. 61-78.

[3] Docketed as Criminal Case Nos. 00-1809 to 00-1816.

[4] Rollo, pp. 42-43.

[5] Id. at 53-57.

[6] Id. at 53-55.

[7] Id. at 61-62.

[8] Id. at 63-74.

[9] Id. at 19.

[10] Navarro v. Metropolitan Bank & Trust Company, 473 Phil. 472, 481(2004), citing Sebastian v. Morales, G.R. No. 141116, February 17, 2003, 397 SCRA 549; Cresenciano Duremdes v. Agustin Duremdes, 461 Phil. 388 (2003).

[11] G.R. No. 181688, June 5, 2009, 588 SCRA 788, 795.

[12] United Paragon Mining Corporation v. Court of Appeals, 529 Phil. 632 (2006); citing Philippine Valve Mfg. Company v. National Labor Relations Commission, 485 Phil. 58 (2004).

[13] Torres v. Abundo, G.R. No. 174263, January 24, 2007, 512 SCRA 556, 565; citing Castillo v. Court of Appeals, G.R. No. 159971, March 25, 2004, 426 SCRA 369, 375.

[14] Rollo, p. 61.

[15] G.R. Nos. 187912-14, January 31, 2011, 641 SCRA 175, 182.

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