

YOUNG AN CHO AND MA. CECILIA S. CHO, PETITIONERS, V. YOUNG JOO LEE, RESPONDENT.*G.R. No. 224121. October 02, 2019*

Ponente: J. REYES, JR., J.

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Assailed in this Petition for Review on Certiorari are the January 13, 2016 Decision[1] and April 8, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 134886 which nullified the October 23, 2013 and February 24, 2014 Orders[3] of the Regional Trial Court (RTC), San Pedro, Laguna, Branch 31 in Criminal Case Nos. 13-8936-SPL and 13-8937-SPL, which granted the substitution of Informations for qualified theft filed against Young An Cho (An Cho) and Ma. Cecilia S. Cho (Cecilia) by Young Joo Lee with Informations for estafa through falsification of commercial documents.

The Antecedents

Respondent and her husband, Ok Cheon Lim (Lim) are the owners of S.K.I. Industry, Inc. (SKI) and K.J. Springs and Plastics Technology, Inc. (KJS). On the other hand, An Cho was SKI's general manager while his wife, Cecilia was the accounting and finance manager of both SKI and KJS.

To support the operation of both SKI and KJS, respondent and her husband maintained with the Security Bank, San Pedro, Laguna branch, a joint dollar savings account. Considering that they stayed in their native country of Korea most of the time, respondent and her husband entrusted to petitioners transfer application forms pertaining to the dollar savings account. Respondent instructed petitioners that the application forms should only be used to withdraw money to facilitate the official transactions of the corporations. She further enjoined petitioners that all transactions should be cleared first with her husband.

In August 2011, An Cho resigned from the company. Cecilia also resigned in October 2011. After their resignation, an accounting of petitioners' financial liabilities to the companies was conducted. An examination of the books revealed that petitioners made two (2) unauthorized money transfers from the dollar savings account, consisting of \$100,000.00, withdrawn on June 18, 2009 and \$500,000.00, withdrawn on October 18, 2010. Petitioners were able to withdraw the said amounts by forging respondent's signature on the money transfer application forms. Thereafter, petitioners transferred the amounts withdrawn from the dollar savings account to their own bank account which they also maintained in the same Security Bank branch.

On April 24, 2013, two Informations for qualified theft were filed against petitioners. The Office of the Provincial Prosecutor (OPP) of San Pedro, Laguna averred that petitioners were occupying positions of trust and confidence at the time they stole \$600,000.00 from their employers. The case was eventually raffled to the RTC which, on May 3, 2013, issued an Order stating:

After personal evaluation of the resolution of the Office of the Provincial Prosecutor- San Pedro, Laguna (OPP-SPL) and its supporting documents, the court doubts the existence of probable cause for the offense charged. Pursuant to Section 6, Rule 112 of the Rules of Court, the OPP-SPL is directed to submit additional

evidence within five (5) days from receipt.[4]

Consequently, on August 16, 2013, the OPP, after reevaluation of the same pleadings, affidavits and documents submitted by the parties during the preliminary investigation, issued a Resolution,[5] recommending a modification of the offense charged, from qualified theft to estafa. Accordingly, the OPP filed a motion to substitute the Informations for qualified theft with Informations for two counts of estafa through falsification of commercial documents.

Acting on the motion for substitution, the RTC issued its October 23, 2013 Order approving the modification of the offense charged from qualified theft to estafa through falsification of commercial documents. Respondent moved for reconsideration but the same was denied by the RTC in an Order dated February 24, 2014.

Aggrieved, respondent filed a petition for certiorari with the CA.

The CA Ruling

In a Decision dated January 13, 2016, the CA held that the RTC gravely abused its discretion when it approved the downgrading or substitution of the offense originally charged against petitioners. It ruled that qualified theft was the proper offense considering that the amount alleged to have been stolen was actually taken by petitioners and was not received by them from respondent to later convert for their own personal use so as to make the act fall within the coverage of estafa. The appellate court noted that petitioners took the money from respondent's account by falsifying bank documents and the same was never received by them for and in behalf of respondent. It emphasized that where money is taken and not received, the offense chargeable is qualified theft and not estafa. Hence, the CA disposed the case in this wise:

WHEREFORE, the petition is GRANTED. The assailed orders of the RTC in Criminal Case Nos. 13-8936-SPL and 13-8937-SPL dated 23 October 2013 and 24 February 2014 are NULLIFIED and the Office of the Provincial Prosecutor of San Pedro, Laguna is hereby ordered to act in accordance with the foregoing pronouncements of this Court.

SO ORDERED.[6]

Petitioners moved for reconsideration, but the same was denied by the CA in a Resolution dated April 8, 2016.

It must be noted, however, that on March 3, 2015, the RTC issued an Order[7] dismissing the criminal cases against petitioners for failure to prosecute. The fallo reads:

WHEREFORE, for failure of the prosecution to present any evidence despite every opportunity to do so in violation of both accused' constitutional rights to speedy trial, let these cases be DISMISSED for lack of evidence.

As prayed for by Atty. Blanco, the cash bonds posted by accused Young An Cho and Cecilia Cho are hereby ordered released to them upon presentation of the corresponding official receipts.

SO ORDERED.[8]

The Issue

WHETHER THIS PETITION PRESENTS A JUSTICIABLE CONTROVERSY AFTER THE CRIMINAL CASES AGAINST PETITIONERS HAVE ALREADY BEEN DISMISSED.

The Court's Ruling

The existence of an actual case or controversy is a condition precedent for the court's exercise of its power of

adjudication. An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution.[9] In negative terms, a justiciable controversy must neither be conjectural nor moot and academic. There must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. The reason is that the issue ceases to be justiciable when a controversy becomes moot and academic; otherwise, the court would engage in rendering an advisory opinion on what the law would be upon a hypothetical state of facts.[10]

A case becomes moot and academic when the conflicting issue that may be resolved by the court ceases to exist as a result of supervening events.[11] While it is true that this court may assume jurisdiction over a case that has been rendered moot and academic by supervening events, the following instances must be present:

(1)

Grave constitutional violations;

(2)

Exceptional character of the case;

(3)

Paramount public interest;

(4)

The case presents an opportunity to guide the bench, the bar, and the public; or

(5)

The case is capable of repetition yet evading review.[12]

None of these circumstances are present in this case. The dismissal of the criminal cases against petitioners operates as a supervening event that mooted the present petition. Even if the Court decides on the proper offense to be charged against petitioners, there is no longer any Information to be substituted. Any resolution on the propriety of downgrading the offense charged from qualified theft to estafa would no longer serve any useful purpose. Moreover, it must be emphasized that no petition was filed to assail the dismissal of the criminal cases for violation of the accused's right to speedy trial. Hence, the court will neither determine an abstract proposition nor express an opinion in a case in which no practical relief may be granted in view of supervening events.[13]

WHEREFORE, the petition is DENIED for being moot and academic.

SO ORDERED.

Carpio (Chairperson), Caguioa, Lazaro-Javier, and Zalameda, JJ., concur.

[1] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edwin D. Sorongon and Marie

Christine Azcarraga-Jacob, concurring; rollo, pp. 47-60.

[2] Id. at 62.

[3] The RTC Orders were not attached to the petition.

[4] Id. at 63.

[5] Id. at 71-76.

[6] Id. at 59-60.

[7] Id. at 80.

[8] Id. at 80.

[9] Spouses Arevalo v. Planters Development Bank, 686 Phil. 236, 248 (2012).

[10] Korea Exchange Bank v. Judge Gonzales, 520 Phil. 691, 701 (2006); Desaville, Jr. v. Court of Appeals, 480 Phil. 21, 27 (2004).

[11] David v. Pres. Macapagal-Arroyo, 522 Phil. 705, 753 (2006).

[12] Republic v. Moldex Realty, Inc., 780 Phil. 553, 561 (2016).

[13] Bautista v. Board of Energy, 251 Phil. 167, 172 (1989), citing Bungat v. Bureau of Labor Relations, 135 SCRA 225 (1985).

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