

SIMPLICIO CRUZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HONORABLE ERNESTO S. TENGCO, PRESIDING JUDGE, BRANCH VI, REGIONAL TRIAL COURT, MANILA, RESPONDENTS.

G.R. No. 67228. October 09, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

This petition for certiorari seeks to set aside the order of respondent Judge Ernesto S. Tengco of the Regional Trial Court of Manila, Branch VI, denying the demurrer to evidence filed by herein petitioner Simplicio Cruz in Criminal Case No. 83-16152, entitled *People vs. Simplicio Cruz y Lazaro*.

Petitioner Simplicio Cruz stands charged in the court a quo with the crime of corruption of minors. The information dated March 18, 1983 reads:

"The undersigned accuses SIMPLICIO CRUZ y LAZARO alias SHIRLEY of a violation of Article 340 of the Revised Penal Code, as amended by Batas Pambansa Bilang 92, committed as follows:"That in or about and during the month of February 1983 and for sometime prior and subsequent thereto, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully, feloniously and habitually, with abuse of authority or confidence, promote or facilitate the prostitution or corruption of TOINETTE MARIE RONQUILLO, a minor, 15 years of age, to satisfy the lust of another".[1]

Upon petitioner's plea of not guilty, trials were held on July 6 and 8, 1983 and January 13, 1984, during which the prosecution presented three [3] witnesses and offered documentary evidence. The three witnesses who testified for the prosecution were police officers of the Western Police District. They testified on the complaint of Toinette Marie Ronquillo against petitioner Cruz for illegal detention and physical injuries; the raid on petitioner's residence which revealed photographs of nude male and female models, including those of the complainant; the arrest and investigation of petitioner who did not give a written statement; the complainant's affidavits taken by the police; and the eventual filing of the complaint for corruption of minors with the City Fiscal's office.

The documentary evidence consisted of the two affidavits executed by the complainant on March 16 and 17, 1983, respectively;[2] photos of a young woman, said to be complainant Toinette Marie Ronquillo, in different obscene poses;[3] receipt dated March 17, 1983 of the articles seized from petitioner's residence in the course of the raid;[4] the Booking Sheet and Arrest Report dated March 17, 1983 prepared by the arresting officer;[5] and the police information report, also dated March 17, 1983.[6]

Because complainant Toinette Marie Ronquillo never appeared at any stage of the proceedings nor testified in court despite the notices sent to her, the prosecution was compelled to rest its case.

On April 2, 1984, the defense filed a demurrer to evidence which respondent Judge Tengco denied in his order of April 16, 1984 "considering the grounds alleged in the motion to dismiss [demurrer to evidence] not having been well-taken".[7]

Hence, petitioner filed the instant petition for certiorari [Rule 65] claiming that the denial of his demurrer to evidence is not in accordance with law and the evidence.[8]

On motion of defense counsel, respondent court suspended the reception of the defense's evidence pending final resolution of the instant petition.

Under the Revised Rules of Court of 1964, the applicable law in the present case, there is no specific rule in criminal procedure which is directly in point. However, the courts have in some exceptional instances applied the rule in civil procedure embodied in Rule 35, section 1 of the Rules which states:

"SECTION 1. Effect of judgment on demurrer to evidence. - After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

The aforesaid rule simply means that after the plaintiff has rested his case, the defendant may move for the dismissal of the action on the ground of insufficiency of evidence. In the event his motion is denied in the first instance, he may choose to offer evidence. On the other hand, if his motion is granted and the order of dismissal is reversed on appeal, judgment is rendered in favor of the adverse party because the movant loses his right to present evidence. However, in criminal cases where the motion to dismiss or demurrer to evidence is granted, the dismissal is tantamount to an acquittal from which there is no appeal.[9]

Under the Rule 119, section 15 of the present Rules on Criminal Procedure which took effect on January 1, 1985, the accused is explicitly granted the right to move for a demurrer to evidence. However, once he avails himself of that prerogative, he is deemed to have waived his right to present evidence and the case is submitted for judgment. Thus:

"SECTION 15. Demurrer to evidence. - When after the prosecution has rested its case, the accused files a motion to dismiss the case on the ground of insufficiency of evidence, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution."

It must be made clear, however, that the 1985 Rules on Criminal Procedure has no applicability to the case at bar as the challenged order of Judge Tengco was issued on April 16, 1984, or before the new rules became effective.

The question now arises: Can the accused in a criminal case assail the denial of the demurrer to evidence in a special civil action for certiorari?

In the case of *Joseph vs. Villaluz*, G.R. Nos. L-46329-30, April 10, 1979, 89 SCRA 324, it was held that this Court will not annul an interlocutory order denying a motion to dismiss in a criminal case. Appeal is the proper remedy of the petitioners in order to have the findings of fact reviewed by a superior court.[10] This is a reiteration of an earlier ruling in *People vs. Romero*, 22 Phil. 565, where the Court stressed that the question of whether or not the evidence presented by the prosecution is sufficient to convince the court that the defendant is guilty beyond reasonable doubt of the crime charged, rests entirely within the sound judgment of the trial court. The error, if any is committed by the denial of the demurrer to evidence, can only be corrected by appeal.

Similarly, the Court held in *People vs. Court of Appeals*, G.R. No. 51635, December 14, 1982, 119 SCRA 162, that it has been the long settled rule that certiorari does not lie to challenge the trial court's interlocutory order denying the accused's motion to dismiss. The appellate courts will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not yet established the guilt of the accused beyond reasonable doubt. The orderly procedure prescribed by the Rules of Court is for the accused to

present his evidence after which the trial court, on its own assessment of the evidence submitted by both the prosecution and the defense, will then properly render its judgment of acquittal or conviction. If the verdict is one of acquittal, the case ends there. But if it is one of conviction, then appeal is the proper recourse.

Thus, it cannot be said that respondent Judge Tengco, in denying petitioner's motion to dismiss the criminal action against him for insufficiency of evidence, gravely abused his discretion. His denial order finds ample support in our jurisprudence. Verily, petitioner has not shown that he is entitled to the relief prayed for.[11]

ACCORDINGLY, the present petition for certiorari is dismissed. The challenged order of respondent Judge Ernesto S. Tengco of the Regional Trial Court of Manila, Branch VI, dated April 16, 1984 in Criminal Case No. 83-16152 entitled *People vs. Simplicio Cruz y Lazaro*, denying the demurrer to evidence [motion to dismiss] by petitioner, is sustained. Said criminal case is ordered remanded to the trial court for further proceedings. Petitioner is given the option to either present his evidence or to submit the case for decision based solely on the prosecution's evidence.

This decision is immediately executory upon its promulgation.

SO ORDERED.

Feria, Acting C.J., (Chairman), Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Annex B, Petition.

[2] Exhibits A and B.

[3] Exhibits C, C-1 to C-18.

[4] Annex D.

[5] Exhibit E.

[6] Exhibit F.

[7] Annex A, Petition.

[8] p. 15, Rollo.

[9] *People vs. City Court of Silay*, G.R. No. L-43790, Dec. 9, 1976, 74 SCRA 247.

[10] See also *Manalo vs. Mariano*, G.R. No. L-33850, January 22, 1976, 69 SCRA 80.

[11] Rule 65, section 8, Rules of Court.

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