

PEOPLE OF THE PHILIPPINES, PLAINT-APPELLEE, VS. ISAAC LONDOÑO, ACCUSED-APPELLANT.*G.R. No. 82350. October 07, 1991*

Ponente: NARVASA, J.

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The facts involved in the appeal at bar are remarkably similar to those in *Oñas v. Sandiganbayan*, decided by the Court en banc on October 2, 1989.[1] Consequently, application of the doctrine laid down in *Oñas* is all that is needful to resolve the present case.

The accused-appellant herein, Isaac Londoño, was indicted before the Regional Trial Court of Legaspi City[2] for the felony of rape committed on or about December 4, 1982 in Guinobatan, Albay, the alleged offended party being a 12-year old, mentally retarded girl named Expedina Morales y Padre. Londoño entered a plea of innocent when arraigned on this charge, after which the prosecution adduced evidence and rested its case in due course.

Londoño then sought leave of the Trial Court to file a demurrer to evidence under Section 15, Rule 119 of the Rules of Court. By Order given on September 24, 1986, the Court granted his counsel a period of thirty (30) days within which to submit the demurrer, and reset the hearing of the case "for the reception of accused's evidence," directing Londoño "to appear on the * * * (appointed) date of hearing." [3] The demurrer was filed by Londoño's counsel on March 9, 1987, [4] after obtaining several extensions. [5] To that demurrer the prosecution presented an opposition dated April 7, 1987. [6]

On July 27, 1987, the Trial Court issued an order to the effect that the case was deemed submitted for decision, the accused Londoño having by filing a demurrer to evidence, waived his right to present evidence in his behalf. [7] The Court later caused issuance of notice to the parties requiring their appearance on September 23, 1987 for the "promulgation of the decision." [8]

Londoño's counsel reacted by filing a motion dated September 19, 1987, advocating the theory that his client had not lost the right to present evidence by filing a demurrer to evidence as provided in Section 15, Rule 119 said section being unconstitutional because it deprives him of his constitutional right to present evidence in his behalf (Sec. 14 [3], Article IV [Bill of Rights], Constitution) and thus diminishes his substantive rights (Sec. 5 [5], Constitution), and upon this ground, praying that "the promulgation of judgment be set aside and the proposed judgment be considered only as a resolution of the pending Demurrer to Evidence." What the Court did, by Order dated September 23, 1987, was to give the parties fifteen days "to file their respective memorandum" on the issues raised in Londoño's motion, and to reset the promulgation of judgment to November 11, 1987. [9] Only the prosecution filed a memorandum, however; Londoño did not, despite obtaining an extension to do so. [10]

On October 28, 1987, the Trial Court promulgated an Order denying Londoño's motion of September 19, 1987 and advising that the promulgation of judgment would "proceed as scheduled * * *." [11] However, it was not until January 26, 1988 that the promulgation of the judgment was eventually effected, [12] promulgation having been delayed by Londoño's failure to appear at earlier settings thereof. [13] The decision found Londoño guilty

beyond reasonable doubt of the crime charged and imposed on him the penalty of reclusion perpetua and the obligation to indemnify the victim in the amount of P30,000.00. Londoño filed his notice of appeal on the same day, January 26, 1988.[14]

On November 13, 1988, amendment of the law governing demurrers to evidence (Sec. 15, Rule 119, Rules of Court) went into effect.

As already stated, *Oñas v. Sandiganbayan*[15] determines the disposition of Londoño's appeal. *Oñas* ruled as follows:[16]

"The Sandiganbayan was, to be sure, quite correct in emphasizing to *Oñas* on July 1, 1988 that by filing a demurrer to evidence, she was waiving the right to present evidence. That cautionary advice was entirely justified by the governing provision then in force, Section 15, Rule 119 of the 1985 Rules on Criminal Procedure — a provision having no counterpart in the 1964 Rules and obviously meant to alter the jurisprudential principle therefore obtaining — said Section 15 reading as follows:

'SEC. 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.'

But the law was changed after *Oñas*' demurrer to evidence had been overruled, verdict rendered against her, her motion for reconsideration of her conviction denied by Resolution promulgated on November 9, 1988 and before she could take an appeal to this Court. On November 13, 1988, the 1988 amendments to the 1985 Rules on Criminal Procedure (Rules 110-126, Rules of Court) went into effect. Section 15, Rule 119, was amended to read as follows:

'SEC. 15. Demurrer to Evidence.—After the prosecution has rested its case, the Court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the Court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (n)'

Pursuant to the time-honored rule to which attention is drawn by the Solicitor General, that adjective statutes may be made applicable to actions pending and undetermined at the time of their passage, the amended provision should have been applied to *Oñas*, specially since it is favorable to her. So does this Court now rule: Section 15, Rule 119, as lastly amended, applies as regards *Oñas*. Since she sought and was granted leave to file a demurrer to evidence, and she made an explicit reservation to present evidence in the event of denial of her demurrer (withdrawing an earlier waiver made by her), her situation falls within said Section 15, Rule 119, as amended. Not having expressly waived the right to adduce evidence, she did not lose the right to do so after her motion for dismissal was denied. Hence, the Court is constrained to regard as grave error, because contrary to the letter and spirit of the applicable law (albeit probably unintended), the Sandiganbayan's act of ruling otherwise under the circumstances, and convicting *Oñas* on the basis only of the evidence of the prosecution."

WHEREFORE, the Court Resolved to SET ASIDE (1) the Order of the Trial Court of July 27, 1987 — declaring the case submitted for decision on the basis of the evidence of the prosecution, the accused Londoño being deemed to have waived the right to present evidence by filing a demurrer to evidence; (2) the Order of October 28, 1987 — denying Londoño's motion of September 19, 1987; and (3) the Decision promulgated on January 26, 1988, and to REMAND the case to the Trial Court for reception of the appellant's evidence and such further proceedings as are required by law, without pronouncement as to costs.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] 178 SCRA 261, 265-267; see also, *Peo. v. Ciobal*, 184 SCRA 464, promulgated by the First Division on April 20, 1990, per Gancayco, J., and the extended Resolution of the Third Division of this Court dated September 19, 1989 in G.R. No. 78759 entitled "*Bonalos v. People*"

[2] Branch III, Hon. Wenceslao R. Villanueva, Jr., presiding

[3] Original record, p. 412

[4] *Id.*, pp. 441-449

[5] *Id.*, pp. 416, 417, 427, 428, 436

[6] *Id.*, pp. 453-457

[7] *Id.*, p. 458

[8] *Id.*, pp. 459-462

[9] *Id.*, p. 469

[10] *Id.*, pp. 468, 469

[11] *Id.*, p. 473

[12] *Id.*, p. 505

[13] *Id.*, SEE pp. 485-499

[14] *Id.*, p. 507

[15] 178 SCRA 261, 265-267; SEE footnote 1, ante

[16] Footnotes omitted

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