

JAIME BERNARDO AND CYNTHIA BERNARDO, PETITIONERS, VS. COURT OF APPEALS, NINTH DIVISION, AND VICTORIAS MILLING COMPANY, RESPONDENTS.

G.R. No. 82483. September 26, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to set aside the March 9, 1988 decision* of the Court of Appeals, Special Ninth Division in CA-G.R. No. 13760 entitled "Victorias Milling Co., Inc., petitioners, vs. Hon. Mariano D. Militar and Jaime Bernardo and Cynthia Bernardo, respondents", modifying the September 28, 1987 decision** of the Regional Trial Court of Negros Occidental, 6th Judicial Regional, Branch 51, Bacolod City** in Criminal Cases Nos. 1938-1964, "People of the Philippines v. Cynthia A. Bernardo and Jaime Bernardo" acquitting the accused of the crime of estafa and ordering Victorias Milling Company to refund the sum of P100,000.00 to the accused.

The undisputed facts of the case as drawn by respondent court from the evidence on record are quoted hereunder:

"(1) Upon complaint of herein petitioner Victorias Milling Co., Inc., the private respondents Jaime and Cynthia Bernardo were accused in twenty-seven (27) criminal cases for estafa, all dated 24 June 1982, before the Regional Trial Court of Bacolod City, Branch 51. The informations charged that the Bernardo spouses, taking advantage of the confidential position of Mrs. Bernardo in the company as Executive Secretary of its Treasurer, defrauded petitioner of various sums of money in the aggregate amount of P900,000.00 more or less. The fraudulent acts alleged were either in the form of double payments (in which the petitioner issued checks to G.T. Trading -- owned by Jaime Bernardo -- for deliveries which were already actually paid for) or the collection of payment for materials under spurious circumstances (such as those payments made for purchase orders issued to other suppliers).

"(2) Significantly, before the subject criminal cases were filed, private respondent Jaime Bernardo filed Civil Case No. 15308 entitled "Jaime Bernardo, Plaintiff, v. Victorias Milling Co., Inc. et. al., Defendants" in Branch 44 of the Bacolod City RTC for the payment of sums of money due him from transactions with petitioner. In that collection case, Bernardo sought to recover, among others, the amount of P100,000.00 he deposited with the petitioner as a demonstration of his willingness to repay whatever double payments may have been made by it to his firm G.T. Trading. In as much as the said amount formed part of the collectibles of his firm from the petitioner, which collectibles incidentally did not entirely belong to him (as a result of his purchasing on credit from other suppliers the materials and supplies he delivered to the petitioner), it was necessary for him to file the civil suit. The suit still pends.

"(3) After trial of the criminal cases, public respondent Judge Mariano D. Militar rendered his aforesaid decision acquitting the spouses Jaime and Cynthia Bernardo of the criminal charges filed against them and ordering herein petitioner to refund to them the aforementioned P100,000.00. The dispositive portion of which reads:

"WHEREFORE, prosecution having failed to prove the guilt of the accused beyond reasonable doubt, accused CYNTHIA A. BERNARDO and JAIME Q. BERNARDO are hereby ACQUITTED of all the charges in the above-entitled cases.

"The Victorias Milling Company (VMC) is hereby ordered to refund the amount of P100,000.00 to accused Jaime Q. Bernardo which was unduly withheld by said company as reflected in Check Voucher No. 80107 dated March 27, 1980 marked as Exhibit "1" -1962 with the expressed conformity of the accused and considered as deposit.

"The bail bond posted by the accused for their provisional liberty is hereby ordered cancelled, with costs de oficio.

'SO ORDERED.'

"(4) On 15 October 1987, the petitioner, through its counsel, filed a notice of appeal without furnishing a copy thereof to the provincial fiscal. Pending action by the trial court on the notice of appeal, the private respondents moved for the execution of the judgment. This motion was opposed by the petitioner.

"(5) During the hearing of this motion of 1 December 1987, the provincial fiscal manifested in open court that he did not contemplate appealing the decision, nor had he filed any notice of appeal.

"(6) Thereafter, the lower court issued an Order dated 25 January 1988, dismissing the petitioner's appeal, as well as mandating the execution of the judgment. Notwithstanding the filing of a motion for reconsideration, another order dated 27 January 1988, was issued, directing the Bank of the Philippine Islands, Bacolod Main Branch, to deliver to the private respondents through the public respondent Provincial Sheriff the amount of P100,000.00) (Decision of the Court of Appeals, Annex "F", Rollo, pp. 110-112).

Victorias Milling Company then filed a special civil action for certiorari with the Court of Appeals which modified the ruling of the lower court, the dispositive portion of which is as follows:

"WHEREFORE, judgment is hereby rendered declaring that portion of the questioned Decision which orders petitioner (Victorias Milling Company) to refund P100,000.00 to private respondent as well as its corollary orders as null and void and accordingly commanding the respondents not to enforce the same. Costs against respondents.

"SO ORDERED." (p. 129, Rollo)

The Bernardo spouses' subsequent motion for reconsideration was denied, hence, this petition.

In its resolution dated December 5, 1988, the Court gave due course to the petition and required the parties to submit simultaneous memoranda (Rollo, p. 154). Petitioners filed their memoranda on January 14, 1989 (Ibid., p. 212) while respondents submitted theirs on January 31, 1989 (ibid., p. 228).

Herein petitioners assign the following error:

RESPONDENT COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION WHEN IT ALLOWED VICTORIAS MILLING CORPORATION TO APPEAL:

- a) THE DECISION OF ACQUITTAL AND MORE SPECIFICALLY THE ORDER TO REFUND IN VIEW OF ITS COUNTERCLAIM IN A SEPARATE CIVIL ACTION NOW PENDING BEFORE THE OTHER BRANCH OF THE REGIONAL TRIAL COURT OF NEGROS OCCIDENTAL;
- b) WITHOUT THE AUTHORITY OF THE FISCAL AND THE SOLICITOR GENERAL;
- c) IN THE CRIMINAL CASES WHICH HAVE ALL BECOME FINAL AND EXECUTORY, AND

d) WHERE NEITHER APPEAL NOR CERTIORARI IS A REMEDY AFTER ACQUITTAL.

The petition is devoid of merit.

There is no dispute that a judgment of acquittal is immediately final and executory and that neither an appeal nor certiorari is an available remedy (*City Fiscal of Cebu v. Hon. Woodrow Kintanar*, G.R. No. L-31842, April 30, 1970, 32 SCRA 601). Respondents do not contest this doctrine as they are not assailing the judgment of acquittal in the instant case.

However, as to an appeal by the complainant on the civil aspect of the case this Court has recently ruled that, subject to the rules on double jeopardy, if a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party of complainant may not take such appeal. (*People of the Philippines vs. Hon. Santiago*, G.R. No. 80778, June 20, 1989) However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused (citing *Padilla v. Court of Appeals*, 129 SCRA 558 [1984]; *People v. Jalandoni*, 131 SCRA 454 [1984]; and Rule 122, Section 11(b) Revised Rules of Criminal Procedure). (Underscoring supplied)

In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in the name of said complainant (Section 1, Rule 65 Rules of Court; Sections 1 and 2, Rule 3, *supra.*; *People of the Philippines v. Hon Pedro T. Santiago*, G.R. No. 80778, June 20, 1989). (Underscoring supplied).

Based on the foregoing, the Court has clearly settled the matter by ruling that despite a judgment of acquittal, the offended party, private respondent in the case at bar, may appeal, only insofar as the civil aspect of the case is concerned. Such an appeal dispenses with the authority and representation of both the fiscal and the Solicitor General, considering that the subject matter of the action involves solely the interests of the offended party and hence, no longer concerns the State.

It will be noted however that the portion of the decision appealed from still pends in another court and should therefore be properly litigated therein.

PREMISES CONSIDERED, the petition is hereby DISMISSED and the decision of the respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

* Penned by Associate Justice Alfredo L. Benipayo and concurred in by Associate Justices Jose C. Campos, Jr. and Venancio D. Aldecoa, Jr.

** Penned by Judge Marianito D. Militar.

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