

MARIETTA SALDANA, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 88889. October 11, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Where the trial court prematurely terminated the presentation of the prosecution's evidence and forthwith dismissed the information for insufficiency of evidence, may the case be remanded for further proceedings?

Petitioner Marietta Saldana was charged with the crime of estafa under the following information:

"That on or about and during the periods comprised of from April, 1982 to December, 1983 in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then a Collecting Officer of the Valle Verde Bagong Lipunan Community Association, Inc., represented by Miguel Roberto and Mercedes Tan, President and Director, respectively, and as such, she was authorized to collect from the members of the association payments representing their amortization dues and other association fees, received from the members the amount of P642,538.00 with the obligation on the part of the accused to remit said collections to the said association, but the accused once in possession of the said amount, far from complying with her obligation, with unfaithfulness and abuse of confidence, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to her own personal use and benefit the amount of P642,538.00 and despite demands to remit and/or turn over the said collections, she failed and refused and still fails and refuses to do so, to the damage and prejudice of the offended party in the aforementioned amount of P642,538.00." (Emphasis supplied; pp. 4-5, Rollo.)

The petitioner pleaded not guilty upon arraignment.

At the trial on May 27, 1986, the prosecution presented Mercedes Tan, vice-president of the complainant Association, as its witness. She identifies certain exhibits, including a Consolidated Financial Report dated February 24, 1984 allegedly submitted by the petitioner to the Association. The report showed that petitioner had collected a total of P2,855,133.93 as occupancy fees and association dues from members of the Association and disbursed P1,915,719.50 from April 25, 1982 to December 31, 1983, leaving a balance of P939,414.43. She issued three (3) checks to cover the balance, one of which, for P642,538.86, bounced, and became the subject of Crim. Case No. 64758.

On June 13, 1986, the trial court, upon request of the prosecution, issued a subpoena duces tecum and ad testificandum ordering the Manager of the Citytrust Banking Corporation, Ortigas Branch, to appear and testify on June 17, 1986. The Manager was also required to bring the ledger of Current Account No. 32-00066-9 for the period of March 1, 1982 to March 1, 1984, the signature card for the account, the Board resolution authorizing the opening of the account, and the deposit slips of the account for the period of March 1, 1982 to March 1, 1984. The People and the Association alleged that the account was opened by the Association and the petitioner was instructed to deposit her collections therein.

The Bank Manager did not come to court on June 17, 1986. The prosecution asked that a show-cause order be issued to him. In the meantime, the prosecution called Linel Garcia Cuevas to testify that as a member of the Association she paid her amortizations and association dues to the petitioner, and to identify the receipts issued to her by the petitioner. The defense objected to the presentation of Cuevas because she was not the offended party. The trial Judge sustained the objection, ruling that "granting that she (accused) received the money from the members and did not give the amount to the Corporation, it should be the individual members who will file the necessary complaint, not the corporation." (p. 8, Rollo.)

A motion for reconsideration was filed by the prosecution. Memoranda were submitted by both sides.

The trial was reset. At the prosecution's behest, another subpoena was served on the Bank Manager to bring the records of Current Account No. 32-00066-9 for the hearing on July 29, 1986, but he again failed to appear in court. The prosecution manifested that it had a ready witness and other evidence besides. However, the court reset the trial because the prosecution's motion for reconsideration of the court's order sustaining the defense' objection to Cuevas' testimony was still unresolved.

On August 8, 1986, the prosecution received a copy of the accused's "Motion to Consider the Prosecution to Have Rested Its Case and to Dismiss the Case for Insufficiency of Evidence." The prosecution promptly opposed it.

At the hearing of the motion to dismiss, the prosecution informed the court that it had other witnesses to present and that it would file a petition for certiorari should the trial court deny its pending motion for reconsideration of the order disallowing Cuevas, and other association members from testifying.

On September 9, 1986, the court denied the prosecution's motion for reconsideration of the order barring Cuevas and other members of the Association from testifying. The court also terminated the presentation of further evidence for the prosecution and dismissed the information for insufficiency of evidence.

The People elevated the case to the Court of Appeals on a petition for certiorari (CA-G.R. SP No. 10227).

On February 28, 1989, the Court of Appeals granted the petition. The dispositive portion of its decision reads as follows:

"WHEREFORE, the questioned order of the respondent Judge dated September 9, 1986 is hereby ANNULLED and SET ASIDE. Criminal Case No. 64758 is REINSTATED and the respondent Judge is DIRECTED to allow the petitioners to proceed with the further presentation of their evidence including but not limited to the testimony of members/homeowners of the complainant Association regarding payments made by them to the accused. Costs against the private respondent." (p. 44, Rollo.)

The petitioner seeks a review of that decision alleging that the Court of Appeals:

1. failed to "capture" the facts and the issues involved;
2. erred in stating that it is immaterial whether it was the Association (as a corporate entity) or its members who suffered the damage and prejudice, and consequently erred in ordering the presentation of evidence on a matter not alleged in the information;
3. erred in granting the petition for certiorari despite the failure of the prosecution to file a motion for reconsideration of the questioned order of dismissal of September 9, 1986 of the trial court; and
4. erred in ordering the reopening of the case, violating the rule on double jeopardy.

The petition has no merit. Petitioner's insinuation that the Court of Appeals did not "capture" or comprehend the facts and issues in this case is officious and impertinent.

The reason for the defense's objection to the presentation of Cuevas as a prosecution witness was "its assumption that she would be presented to testify as the party damaged or prejudiced." (p. 2, Petition, p. 14, Rollo.) That assumption was baseless for the prosecution had clearly manifested that Cuevas would "prove that she is one of the members of the association who paid amortizations and association dues to the accused and also to identify receipts which bear the signature of the accused." (p. 4, TSN, June 17, 1986, cited on p. 7 of the Petition.) The error of the trial court's theory that even if Cuevas testified, she would be unable to prove that damage or prejudice was suffered by the Association was pointed out by the Court of Appeals as follows:

"Whether the Association is prejudiced by the acts of the accused can be resolved only if the prosecution is allowed to present the members/homeowners as witnesses and the official receipts as evidence. Assuredly the Association stands to suffer if it can no longer collect the amortization and association dues from members/homeowners who have already paid the same to the accused. If the testimony of the members/homeowners is not admitted, how can the Association prove that the accused received the money in its behalf? How can it prove that the accused was able to collect from the members/homeowners because they recognized her as collecting officer or agent of the Association? If the receipts are not admitted, how can the Association prove that the accused received payments in its behalf?" (p. 43, Rollo.)

As the offended party, the Association, is an artificial person, the only way it can "testify" on the damage and prejudice that it suffered is through the testimony of its members.

In this case, it was established that petitioner was employed by the Association as its collector, hence, she occupied a fiduciary position in relation to the Association. The By-Laws or Executive Order No. 535 did not prohibit her appointment as such by the Association subject to the Treasurer's direction and control.

People vs. Yu Chai Ho, 53 Phil. 874, is still sound doctrine. The law is clear that "another" (hence, not necessarily the owner of the money or goods misappropriated) should have been prejudiced by the breach of trust committed by the accused. The onus of the offense is the infidelity of the accused to his trust by which another suffers damage or prejudice.

The prosecution's failure to file a motion for reconsideration in the trial court before commencing certiorari proceedings in the Court of Appeals, was not fatal to the petition for this rule does not apply "where the proceeding in which the error occurred is a patent nullity," or "where the deprivation of petitioner's fundamental right to due process taints the proceedings against him in the court below not only with irregularity but nullity," or "when special circumstances warrant immediate and more direct action" (Matute vs. CA, 26 SCRA 768). Since the prosecution was deprived of due process, the case is an exception to the rule requiring a previous motion for reconsideration before a petition for certiorari may be filed.

The order of the Court of Appeals reinstating the criminal case for further hearing by the trial court does not violate the rule on double jeopardy. One of the elements of double jeopardy is a competent court. The trial court in this case was ousted from its jurisdiction when it violated the right of the prosecution to due process by aborting its right to complete the presentation of its evidence. Hence, the first jeopardy had not been terminated. The remand of the case for further hearing or trial is merely a continuation of the first jeopardy. It does not expose the accused to a second jeopardy (People vs. Bocar, 138 SCRA 166).

In Bocar, an information for theft was filed against the three accused therein who, upon arraignment, pleaded "not guilty." Respondent Judge conducted a "summary investigation" questioning the complainant and the accused, after which he issued an order dismissing the case. Acting upon a special civil action seeking the annulment of said order, this Court found that the prosecution was denied due process as it never had the chance to offer its evidence formally in accordance with the Rules of Court. In setting aside the order of dismissal and remanding the

case for trial on the merits, this Court held:

"Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated (*Uy vs. Genato*, L-37399, 57 SCRA 123 [May 29, 1974]; *Serino vs. Zosa*, L-33116, 40 SCRA 433 [Aug. 31, 1971]; *People vs. Gomez*, L-22345, 20 SCRA 293 [May 29, 1967]; *People vs. Balisacan*, L-26376, 17 SCRA 1119 [Aug. 31, 1966]).

"The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the State's right to due process raises a serious jurisdictional issue (*Gumabon vs. Director of the Bureau of Prisons*, L-30026, 37 SCRA 420 [Jan. 30, 1971]) which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (*Aducayen vs. Flores*, L-30370, [May 25, 1973] 51 SCRA 78; *Shell Co. vs. Enage*, L-30111-12, 49 SCRA 416 [Feb. 27, 1973]). Any judgment or decision rendered notwithstanding such violation may be regarded as a 'lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head' (*Aducayen vs. Flores*, *supra*).

"Respondent Judge's dismissal order dated July 7, 1967 being null and void for lack of jurisdiction, the same does not constitute a proper basis for a claim of double jeopardy (*Serino vs. Zosa*, *supra*).

"xxx xxx xxx

"Thus, apparently, to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.

"Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (*People vs. Ylagan*, 58 Phil. 851). The lower court was not competent as it was ousted of its jurisdiction when it violated the right of the prosecution to due process.

"In effect, the first jeopardy was never terminated, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy." (at pp. 170-172.)

WHEREFORE, the petition for review is denied, and the decision dated February 28, 1989 of the Court of Appeals in CA-G.R. SP No. 10227 is affirmed. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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