

## FIRST DIVISION

[ G.R. No. 119010, September 05, 1997 ]

**PAZ T. BERNARDO, PETITIONER, VS. COURT OF APPEALS, HON. OSCAR L. LEVISTE AND FLORITA RONQUILLO-CONCEPCION, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

For an orderly procedure in the disposition of criminal cases the Rules of Court provides that the prosecution and the defense present their evidence in the order prescribed in Sec. 3, Rule 119, after which, evaluating the evidence presented, the trial court renders judgment either of acquittal or conviction. Under Sec. 15 of the same Rule, after the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence either on its own initiative after giving the prosecution an opportunity to be heard, or on motion of the accused filed with prior leave of court. If the court denies the demurrer or motion to dismiss, 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.

The new rule on demurrer to evidence was first incorporated in the 1985 Rules on Criminal Procedure which significantly changed the ruling in *People v. Mamacol*<sup>[1]</sup> and *Abriol v. Homeres*<sup>[2]</sup> that when a motion to dismiss on insufficiency of evidence is denied the accused has a right to present evidence in his behalf. Earlier the rule was, when after the prosecution has rested its case, and the accused files a motion to dismiss on insufficiency of evidence, he waives the right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution.<sup>[3]</sup> The rule was further modified in 1988 to the effect that only when the accused files a demurrer or motion to dismiss on insufficiency of evidence without express leave of court that the accused may be deemed to have waived his right to present evidence and the case considered submitted for decision on the basis of the evidence for the prosecution. If the accused has obtained prior leave of court, in case of denial of his motion to dismiss, he retains his right to present evidence in his behalf. The court may also motu proprio dismiss the case on insufficiency of evidence, but before doing so, it should give the prosecution an opportunity to be heard and to oppose the motion.<sup>[4]</sup>

We are now called upon to apply the new rule on demurrer to evidence.

Paz T. Bernardo was originally charged with four (4) counts of violation of B.P. Blg. 22 before the Regional Trial Court of Quezon City, docketed as Crim. Cases Nos. Q-93-46792-95. Subsequently, private complainant, respondent Florlita Ronquillo-

Concepcion, executed an Affidavit of Desistance which led to the dismissal of Crim. Cases Nos. Q-93-46794 and Q-93-46795, thus leaving Crim. Cases Nos. Q-93-46792 and Q-93-46793 to be disposed of by the trial court.

On 20 May 1994, after presenting its last witness, the prosecution rested its case and formally offered its exhibits. That hearing was set at 8:30 a.m. on that date for continuation of the reception of the evidence for the prosecution as reflected in the calendar of the court. [5] After the prosecution had formally offered its evidence, the following transpired in open court -

COURT:

Alright, prosecution having rested, defense will now present its evidence. Proceed.

ATTY. MIRAVITE:

Your honor, we respectfully ask for a resetting, for leave of court to file demurrer to evidence (underscoring supplied).

COURT:

On what ground?

ATTY. MIRAVITE:

On the ground that the prosecution failed to elicit the fact where the checks were issued and where they were actually dishonored. This is material, your honor, for purposes of determining jurisdiction. Also, your honor, as we mentioned in our comments to the evidence presented by the prosecution, there has been no valid notice of dishonor of the subject checks upon the accused. So, upon those grounds, we believe that the prosecution has not duly made out a case against the accused, and we feel those are sufficient for the dismissal of the case as against the accused.

COURT:

So as to avoid reviewing the records, would you admit that there is no proof where the checks were issued and where they were dishonored?

PRIVATE PROSECUTOR:

No, we would not admit that, your honor. They were dishonored actually in Manila, but the check was deposited in the bank of PAR CREDIT ENTERPRISES in Quezon City, and it was naturally forwarded to the Philippine National Bank where the same was returned to the bank of PAR CREDIT ENTERPRISES here in Quezon City.

COURT:

Where does it appear?

PRIVATE PROSECUTOR:

It is at the back of Exhibit A, your honor.

COURT:

Is it mark(ed)?

PRIVATE PROSECUTOR:

Your honor, it states here, deposited to Philippine National Bank, West Avenue, Quezon City which is at the check marked as exhibit A-4.

COURT:

So, that takes jurisprudence. The elements happened in Quezon City.

PRIVATE PROSECUTOR:

Yes, your honor.

ATTY. MIRAVITE:

The notation read by counsel, your honor, was not marked in evidence, what was marked is B-4 appearing at the dorsal portion of the check which pertains only for (sic) the dishonor, the initial and the date. Nothing was presented as to the fact. If that is so, that was indeed deposited at West Avenue, Quezon City.

PRIVATE PROSECUTOR:

There is, your honor. The stamp received by the Cashier Division, PNB, Quezon City, West Avenue.

COURT:

Anyway, was there an offer of that document?

PRIVATE PROSECUTOR:

Yes, there was an offer of exhibit A-4, your honor. The record would show that we manifested that exhibit B-4 are stamps of the bank reading DAIF over which there are other stamps.

COURT:

You are saying that the word DAIF was marked at the back and offered as proof of the dishonor and the place was evidence?

PRIVATE PROSECUTOR:

Yes, your honor, immediately on top of the word, DAIF.

COURT:

Is there any evidence testimonial that these were encashed and dishonored?

PRIVATE PROSECUTOR:

Yes, your honor, the testimony of this witness is very clear that the checks were deposited and the same was (sic) dishonored by the bank.

COURT:

Do you admit that there was no notice of dishonor?

PRIVATE PROSECUTOR:

We don't admit that, your honor. In fact, there are admissions in handwriting regarding the claim.

COURT:

Is there any evidence presented that these checks were not paid up to now?

PRIVATE PROSECUTOR:

Yes, your honor. First, is the oral testimony of the witness, that it has not been paid; second, exhibits 1 and 1-1, which is the Complaint Affidavit of the witness.

COURT:

Alright, in view of the objections, and in view of the manifestations of the private prosecutor, the defense grounds for demurrer, the same not being well taken is hereby DENIED (underscoring supplied). You will now present your evidence.

ATTY. MIRAVITE:

If your honor please, may we just ask for a reconsideration (underscoring supplied)?

COURT:

If you will waive your right to present your evidence, the Court will give you a period to file a demurrer to evidence. And, if you don't present your evidence now, you will be considered to have waived your right to present evidence (underscoring supplied).