

EIGHTEENTH DIVISION

[CA G.R. SP NO. 06308, February 20, 2014]

**AUDIE ARNADO, PETITIONER, VS. HON. PRESIDING JUDGE,
REGIONAL TRIAL COURT, BRANCH 9, TACLOBAN CITY AND THE
PEOPLE OF THE PHILIPPINES, PUBLIC RESPONDENTS.**

D E C I S I O N

DIY, J.:

Before Us is a Petition^[1] for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the following Orders which were issued by herein public respondent Presiding Judge of Branch 9, Regional Trial Court (RTC), Tacloban City:

A. Order dated June 1, 2011^[2] – which denied the demurrer to evidence filed by herein petitioner (then accused) in Criminal Case Nos. 2002-11-605 and 2002-11-606; and

B. Order dated August 9, 2011^[3] – which denied petitioner's Motion for Reconsideration^[4] of the Order dated June 1, 2011.

The Antecedents

The instant petition contains the following allegations:

Sometime in 1998, petitioner was retained by Nagkahiusang Mamumuo Sa Isabel (NAMASI), a labor organization, to handle the labor case entitled "NAMASI/Carlito Dahuya vs. Philippine Phosphate Corp.", docketed as NLRC RAB Case Nos. 3-01033-88, 3-0104-88, and 9-0383-88, then filed with the Regional Arbitration Branch VIII of the National Labor Relations Commission (NLRC).

Petitioner handled the case on a contingent basis, from the arbitral level all the way to the Supreme Court.

After about ten (10) years of litigation, favorable judgment was rendered in favor of NAMASI, and its leaders namely, Wilfredo Abuda, Jovencia Calipayan, and Felipe Cuyos.

The Regional Arbitration Branch VIII released the judgment award to petitioner by virtue of a duly executed special power of attorney.

It is alleged that Wilfredo Abuda (Abuda, for brevity) had already been paid the full amount of his individual award. However, as he was discontented, Abuda allegedly fabricated a Memorandum of Agreement (MOA) wherein he claimed fifteen percent (15%) of the monetary award as attorney's fees.

Jovencia Calipayan (Calipayan, for brevity) and Felipe Cuyos (Cuyos, for brevity) were directed to report to petitioner's office to claim their rewards, subject to reasonable identification requirements. Afterwards, they allegedly received their full monetary awards.

Abuda, Calipayan, and Cuyos later filed a complaint for Estafa against petitioner before the Office of the City Prosecutor, Tacloban City.

Abuda insisted on his claim for attorney's fees as indicated in the MOA, while Calipayan and Cuyos claimed that petitioner misappropriated the awards due them.

In the interim, petitioner filed a civil case for declaration of illegality of the MOA, etc. against private complainants Abuda, Calipayan, and Cuyos. This was docketed as Civil Case No. CEB-25166 before Branch 8, RTC, Cebu City.

After trial, the RTC, Branch 8, Cebu City issued a Decision on March 5, 2004, the dispositive portion of which reads:^[5]

PREMISES CONSIDERED, this Court finds for the plaintiff and hereby renders judgment against the defendants:

1. Declaring the Memorandum of Agreement (Exh. "D") executed by the parties on September 20, 1996, illegal and contrary to law;
2. Ordering defendant Abuda to return the amount in excess of his entitlement so that part of it may be paid to the co-defendants, after due identification;
3. Ordering all defendants to pay to the plaintiff the following:

P50,000 moral damages

P10,000 as attorney's fees

P5,000 as litigation expenses

SO ORDERED.

Meanwhile, the criminal complaints filed by private complainants Abuda, Calipayan, and Cuyos against petitioner prospered at the Office of the City Prosecutor, Tacloban City, finding probable cause to indict petitioner. As such, on October 23, 2002, two informations for estafa were filed with Branch 9, RTC, Tacloban City (herein respondent court) docketed as Criminal Case Nos. 2002-11-605 and 2002-11-606, viz.:

Criminal Case No. 2002-11-605

INFORMATION^[6]

The undersigned City Prosecutor of the City of Tacloban accuses Atty. Audie Arnado of the crime of Estafa, committed as follows:

That on or about the 8th day of June 1997, in the City of Tacloban,

Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud and with grave abuse of confidence, after having received the amount of P925,010.20, representing the 15% of the total award of P6,166,734.64 in NLRC-R8 Labor Case Nos. 3-0103-88 to 3-0113-88 from the NLRCR8 Officials, wherein accused was under the express obligation to remit, account and deliver said amount to NAMASI, represented by complainant Wilfredo Abuda, pursuant to a Memorandum of Agreement entered into between accused and NAMASI, but accused has remitted an amount of P106,500.00 in favor of NAMASI, and once in possession of the said remaining balance amount of P818,510.20, did, then and there, willfully, unlawfully and feloniously, misappropriate, misapply, and convert the said amount of P818,510.20 to his own personal use or benefits, to the damage and prejudice of complainant NAMASI in the aforementioned amount of P818,510.20, Philippine Currency.

CONTRARY TO LAW.

Criminal Case No. 2002-11-606

INFORMATION^[7]

That on or about the 8th day of June, 1997, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with intent to defraud and with grave abuse of confidence, caused and facilitated the release of the shares of the award of complainant Jovencio Calipayan and Felipe Cuyos, in NLRC-R8 Case Nos. 3-0103-88 to 3-0113-88, in the amount of P29,984.00 each, or for a total amount of P59,968.00, without the consent of said complainants, and having received the said amount in trust for said complainants, and under the obligation to remit, account and deliver the same to the latter, and, once in possession of said amount, did, then and there willfully, unlawfully and feloniously misappropriate, misapply and convert the said amount of P59,968.00 to his own personal use and benefit, to the damage and prejudice of the said complainants in the said amount of P59,968. [sic], Philippine Currency.

CONTRARY TO LAW.

In his effort to have the criminal cases dismissed, petitioner raised the matter to this Court via a petition for certiorari docketed as CA G.R. CEB SP. No. 01670. Petitioner contends that the final and executory decision in Civil Case No. CEB 25166 declaring the MOA a nullity lobs off any basis for the Informations charged against him. On April 20, 2007, this Court, through its Eighteenth (18th) Division, rendered a Decision^[8] adverse to petitioner, the dispositive portion of which states:

WHEREFORE, the instant petition is hereby DENIED for lack of merit.

SO ORDERED.

As reason for its ruling, this Court ratiocinated in this wise:

It is clear, therefore, that pursuant to Article 315, par. 1(b) of the Revised Penal Code, herein petitioner may still be prosecuted for estafa notwithstanding the fact that the Memorandum of Agreement, particularly provision no. 3 thereof which states that "fifteen (15%) of the total award shall be given by Atty. Audie Arnado to the union or NAMASI leaders listed above (Abuda & eight others)", has been declared illegal and without effect. While it is true that the NAMASI leaders no longer have a right over the 15% of the total award in the labor cases and petitioner Arnado is not under any obligation to give the same to them by virtue of the judgment declaring the deed void, the criminal cases for estafa may still prosper upon a showing to the effect that petitioner, rather than remitting the amount of the judgment award that rightfully belonged to NAMASI, misappropriated or converted the same, with intent to defraud and with grave abuse of confidence, to his own personal use and benefit.

On May 28, 2009, petitioner was arraigned. He pleaded not guilty. Thereafter, trial on the merits ensued.

The prosecution presented Abuda as first witness testifying that based on the MOA, he is entitled to 15% of the total award in the labor case entitled "NAMASI/Carlito Dahuya vs. Philippine Phosphate Corp.", docketed as NLRC RAB Case No. 3-01033-88, 3-0104-88 & 9-0383-88.

Abuda further testified that petitioner failed to remit or deliver said amount to the former, which Abuda is entitled to by virtue of the MOA, and with grave abuse of confidence, misappropriated and converted said amount to petitioner's own use.

As second prosecution witness, Calipayan testified that petitioner did not remit Calipayan's share in the judgment award, which petitioner misappropriated and converted to the latter's own use.

The prosecution failed to present additional witnesses. Consequently, petitioner moved^[9] that the prosecution be considered to have waived its right to present additional witnesses and that it be deemed to have rested its case. The RTC granted said motion.^[10]

During the March 16, 2011 hearing, the prosecution rested its case while petitioner sought leave of court to file its demurrer to the prosecution's evidence.^[11]

On March 28, 2011, petitioner, with leave of court, filed a demurrer to evidence.^[12]

On June 1, 2011, public respondent RTC issued an order denying the demurrer to evidence.

On June 30, 2011, petitioner moved for reconsideration of the same.

On August 9, 2011, the RTC issued an Order denying the motion for reconsideration.

Hence, on October 11, 2011, the instant petition was filed.

Petitioner contends that the MOA was not duly authenticated and proved by the prosecution witnesses and as such, it should not be given any evidentiary value. And even on the supposition that the MOA was duly authenticated and proved, the same had already been declared void in Civil Case No. CEB-25166. As such, the MOA does not create any juridical tie between the parties.

Petitioner also cites part of the *ratio decidendi* of this Court in CA G.R. CEB SP. No. 01670 wherein it is stated that petitioner is not under any obligation to give to private complainant Abuda or to the NAMASI leaders 15% of the total awards by virtue of the judgment declaring the MOA void. The petitioner avers that no crime of estafa can be committed because the essential element that the accused must be under any obligation or duty to make delivery of, or return the money, is wanting.

It is further argued that in a criminal charge of estafa by misappropriation or conversion, the essential element of the crime is the existence of a fiduciary relationship between the complainant and the accused. Petitioner avers that no fiduciary relationship has been established since the MOA was declared null and void.

Lastly, petitioner argues that no conversion or misappropriation of money on the second charge of estafa has been established by proof beyond reasonable doubt after the prosecution's second witness, Calipayan, admitted his (Calipayan's) signature appearing in the satisfaction of judgment. Said signature allegedly proves that petitioner was able to pay private complainant his due share in the judgment award in the labor case. As such, the charge that petitioner had misappropriated the same for his own benefit is bereft of merit.

On the other hand, public respondents argue^[13] that under Section 23, Rule 119 of the Rules of Court, "[t]he order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment." Public respondents cites the ruling of the Supreme Court in the case of *Simplico Cruz vs. People of the Philippines* and Hon. Judge Ernesto S. Tengco,^[14] wherein the High Court made a categorical declaration that an order denying a demurrer to evidence may not be reviewed in a special civil action for certiorari since the judicious course of action is to abide by the order of trial prescribed by the Rules of Court and allow the trial court to assess – on the basis of the evidence of both prosecution and defense – the innocence and guilt of the accused.

Public respondents lastly assert that a special civil action of certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as in this case, calls only for a review of any error arising from the exercise of jurisdiction or lack thereof. A review of the sufficiency of the evidence, which is what the instant petition actually seeks, lies outside the function of certiorari as it intrudes into the prerogatives of Rule 41, under ordinary appeals, where an alleged error of judgment may be subjected to review.

The Ruling of the Court

The petition is bereft of merit.