

## THIRD DIVISION

[ G.R. No. 194214, January 10, 2018 ]

**MARILOU PUNONGBAYAN-VISITACION, PETITIONER, V. PEOPLE OF THE PHILIPPINES AND CARMELITA P. PUNONGBAYAN, RESPONDENTS.**

### DECISION

**MARTIRES, J.:**

This petition for review on certiorari seeks to reverse and set aside the 30 January 2009 Decision<sup>[1]</sup> and 18 October 2010 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 77040 which affirmed the 12 May 2003 Judgment<sup>[3]</sup> of the Regional Trial Court, Branch 5, Iligan City (RTC).

### THE FACTS

Petitioner Marilou Punongbayan-Visitacion (*Visitacion*) was the corporate secretary and assistant treasurer of St. Peter's College of Iligan City. On 26 July 1999, acting on the advice of her counsel, she wrote a letter to private respondent Carmelita P. Punongbayan (*Punongbayan*). The correspondence substantially read:

Upon advise of our legal counsel which I had been instructed to hereunder quote this should answer the concerns you embodied in the July 19 memo to Security Bank as well as the July 23, memo to the office of the treasurer to wit:

- A. You had been preening (sic) as the school's validly appointed/designated president when such is not the fact. The validity of the alleged March 10 meeting of the management is still the subject of an on-going determination by the SEC and your misrepresentation as the school's President has no basis in law and in fact.
- B. Even as Officer-in-Charge, your actions on school matters need prior consultation and ratification of the management committees. No such consultation/ratification was had on these matters.
- C. You KNOWINGLY COMMITTED ACTS OF FALSIFICATION when you misrepresented to the bank that your signature is essentially required in disbursements above P5,000.00. Your inordinate desire to poke into the school's finances could be the by-product of an erroneous advice from some defrocked members of the committee. Otherwise, there would have been need to calibrate amounts in the checks vis-a-vis the signatories thereto.<sup>[4]</sup>

Insulted, Punongbayan filed a Complaint for Libel against Visitacion. On 25 October 1999, the Office of the City Prosecutor of Iligan City issued a resolution approving the filing of a case for libel against Visitacion.<sup>[5]</sup>

### ***The RTC Ruling***

In its 12 May 2003 judgment, the RTC convicted Visitacion of libel. The trial court disregarded Visitacion's defense of good faith finding that her act of writing the disputed letter was motivated by hostility or malice. It opined that if it was true that Visitacion merely wanted to safeguard the corporation funds, her resort to an uncivil and confrontational manner was unwarranted. The RTC highlighted that the letter belittled, disparaged, and willfully hurt Punongbayan's sensibilities. It ruled:

WHEREFORE, premises considered, the Court perceives that the evidence on record is not only adequate to prove the guilt of accused beyond reasonable doubt, but overwhelming that she has committed the crime of libel, hence judgment of conviction is hereby rendered, the terms of which provide:

- a. Since there is no aggravating nor mitigating circumstance accused is condemned to suffer a straight prison term of one (1) year; and
- b. Considering that the malicious imputation of a crime referred to in the libelous letter had caused private complainant to be subjected to public contempt and ridicule, and this had caused the latter to underwent (sic) sleepless nights and moral sufferings, additionally, and in accordance with Article 104 of the Revised Penal Code, accused is adjudged to pay by way of civil liability, moral damages to the tune of Three Million Pesos (P3,000,000.00), and the costs of the suit.<sup>[6]</sup>

Aggrieved, Visitacion filed a petition for certiorari with a prayer for Temporary Restraining Order and/or Writ of Preliminary injunction before the CA.

### ***The CA Ruling***

In its 30 January 2009, the CA dismissed Visitacion's petition. The appellate court posited that the promulgation of the judgment despite Visitacion's absence was proper. It explained that under Rule 120, Section 6 of the Rules of Court, trial *in absentia* is permitted should the accused fail to appear during the date of promulgation despite due notice. The CA noted that Visitacion was notified of the scheduled promulgation through her previous counsel and was in fact able to file a motion to defer promulgation of judgment. Further, the appellate court pointed out that the sheriff visited Visitacion at her house on several occasions but she was conveniently not around during those times. Thus, it believed that her excuse for her absence was specious.

In addition, the CA expounded that Visitacion should have filed an appeal and not a petition for certiorari. The appellate court opined that it should have been through an appeal where she could have raised the issues in the present petition for certiorari. It noted that at the time Visitacion filed her petition, the period to file an appeal had yet to expire. Thus, the CA elucidated that the use of an erroneous mode of appeal is cause for dismissal of the petition for certiorari because it is not a substitute for a lost appeal. It ruled:

**ACCORDINGLY**, the Petition is **DISMISSED**.<sup>[7]</sup>

Visitacion moved for reconsideration but it was denied by the CA in its 18 October 2010 resolution.

Hence, this present petition raising the following:

### **ISSUES**

#### **I**

**[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW WHEN IT, IN EFFECT, BRUSHED ASIDE PETITIONER'S ALTERNATIVE PLEA FOR THE APPLICATION OF PREFERENCE OF FINE OVER IMPRISONMENT AS PENALTY FOR LIBEL;**

#### **II**

**[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW WHEN IT, IN EFFECT, AFFIRMED THE COURT A QUO'S IMPOSITION OF MORAL DAMAGES UPON PETITIONER IN THE EXCESSIVE AMOUNT OF THREE MILLION PESOS (P3,000,000.00); AND**

#### **III**

**[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW IN NOT TREATING PETITIONER'S PETITION FOR CERTIORARI AS APPEAL, NOTWITHSTANDING THE FACT THAT SUCH PETITION WAS FILED WITHIN THE REGLEMENTARY PERIOD OF TIME TO FILE AN APPEAL AND DESPITE EXISTENCE OF VALID REASONS TO TREAT IT AS AN APPEAL.**<sup>[8]</sup>

### **OUR RULING**

Before proceeding to the merits of the case, we resolve certain procedural matters.

#### ***Petition for certiorari treated as an appeal***

Visitacion assails that her petition for certiorari should have been treated as an appeal. On the other hand, both public and private respondents counter that the CA correctly dismissed Visitacion's petition for certiorari because it cannot be a substitute for a lost appeal and that a wrong mode of appeal is dismissible.

In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,<sup>[9]</sup> the Court had extensively differentiated an appeal from certiorari. Thus, it is settled that appeal and certiorari are two different remedies, which are generally not interchangeable, available to litigants. In *Butuan Development Corporation v. CA*,<sup>[10]</sup> the Court held that the special civil action of certiorari is not a substitute for an appeal:

A party cannot substitute the special civil action of certiorari under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of certiorari. Remedies of appeal (including petitions

for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

Nevertheless, the general rule that an appeal and a certiorari are not interchangeable admits exceptions. In *Department of Education v. Cuanan*,<sup>[11]</sup> the Court exercised liberality and considered the petition for certiorari filed therein as an appeal:

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. **Recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.** As will be shown forthwith, exception (c) applies to the present case.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for certiorari, immediate recourse to the extraordinary remedy of certiorari is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for certiorari in the CA.

At any rate, Cuanan's petition for certiorari before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly **within the 15-day reglementary period for the filing of a petition for review**. **Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice.**<sup>[12]</sup> (emphases and underslining supplied)

In the case at bar, the Court finds that the interest of substantial justice warrants the relaxation of the rules and treats Visitacion's petition for certiorari as an appeal. This is especially true considering that the same was filed within the reglementary period to file an appeal. It is noteworthy that in the litany of cases<sup>[13]</sup> where the Court did not consider certiorari as an appeal, the former remedy was filed beyond the 15-day period to interpose an appeal.

***Issues raised for the first time on appeal; exceptions***

The Office of the Solicitor General (OSG) argues that Visitacion merely raised the issue of the correctness of the penalties and liabilities imposed in her supplemental motion for reconsideration before the CA. It bewails that in her petition for certiorari, she merely questioned the propriety of the denial of her motion to inhibit before the RTC; the exclusion of some of her exhibits; and the alleged lack of personal service of the notice of the promulgation of judgment. Thus, the OSG laments that the issues put forth in Visitacion's petition for review before the Court were raised for the first time on appeal.

It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process.

[14] Nonetheless, there are also exceptions to the said rule. In *Del Rosario v. Bonga*, [15] the Court explained that there are instances that issues raised for the first time on appeal may be entertained, viz:

Indeed, there are exceptions to the aforesaid rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.

Further, the matters raised in the present petition warrant the relaxation of the rules concerning issues raised for the first time on appeal especially considering the jurisprudential developments since the RTC decision and the needs for substantial justice. In liberally applying the rules in the case at bar, the Court does not wish to brush aside its importance; rather, it emphasizes the nature of the said rules as tools to facilitate the attainment of substantial justice. [16]

Having settled procedural matters, the Court finds the petition meritorious.

### ***Penalty imposed for libel***

In her present petition for review on certiorari, [17] Visitacion no longer questions her conviction for the crime of libel. Rather, she assails the decisions of the courts *a quo* in sentencing her to one (1) year imprisonment and to pay Punongbayan P3,000,000.00 as moral damages.

Relevant is Administrative Circular (A.C.) No. 08-08 [18] which provides for guidelines in the imposition of penalties in libel cases. The pertinent portion thereof reads:

The foregoing cases indicate an emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases under the circumstances therein specified.

All courts and judges concerned should henceforth take note of the foregoing rule of preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the