

## THIRD DIVISION

[ G.R. No. 189402, May 06, 2010 ]

**LIGAYA SANTOS AND ROBERT BUNDA, PETITIONERS, VS.  
DOMINGO I. ORDA, JR., RESPONDENT.**

### DECISION

**NACHURA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision<sup>[1]</sup> dated May 20, 2009 and its Resolution<sup>[2]</sup> dated September 10, 2009. The assailed Decision reversed and set aside the Orders dated September 30, 2005 and December 28, 2005 of the Regional Trial Court (RTC) of Parañaque City, Branch 274,<sup>[3]</sup> while the assailed Resolution denied the motion for reconsideration filed by petitioners Ligaya Santos (Ligaya) and Robert Bunda (Robert).

The facts of the case follow:

On April 2, 2001, Francis Orda (Francis), the son of respondent Domingo Orda, Jr., was shot to death in Parañaque City. He was then twenty years old and an engineering student.<sup>[4]</sup>

A certain Gina Azarcon (Gina) executed her sworn statement that she saw three male persons perpetrate the crime; two of them, later identified as Rolly Tonion (Rolly) and Jhunrey Soriano (Jhunrey), shot Francis inside his car. The City Prosecutor of Parañaque City thus filed an Information for the crime of murder against Rolly and Jhunrey, docketed as Criminal Case No. 01-0425. They pleaded "Not Guilty" during arraignment.<sup>[5]</sup>

Two more witnesses, Ernesto Regala (Ernesto) and his son, Dennis, surfaced. Dennis testified that before Francis was shot to death, the former went to the office of Ligaya, who was then a *Barangay* Chairperson, to deliver collections from the public toilet. When Dennis failed to return home, Ernesto proceeded to fetch him. They then saw Ligaya hand a gun to accused Rolly, saying, "*Gusto ko malinis na trabaho at walang bulilyaso, baka makaligtas na naman si Orda.*" They learned the following day that, instead of respondent, it was Francis who was killed. Thereafter, Rolly asked Dennis to return to Ligaya the gun that Rolly used, but Dennis rebuffed such request. Ligaya later instructed Dennis to monitor the activities of respondent.<sup>[6]</sup> Hence, the Information was filed against Ligaya and a certain Edna Cortez. Upon further testimony of Gina, an Amended Information was filed implicating more accused, including petitioner Robert.<sup>[7]</sup>

Gina, Ernesto and Dennis later recanted their testimonies. On June 11, 2002, the Department of Justice (DOJ) issued a Joint Resolution directing the City Prosecutor

to cause the withdrawal of the Informations for murder against the accused, holding that the prosecution witnesses' testimonies were not credible because of their recantation. On motion of the prosecution, the RTC, Branch 258, issued an Order dated July 5, 2005, allowing the withdrawal of the Informations against the accused and consequently recalling the warrants for their arrest.<sup>[8]</sup>

Respondent elevated the matter to the CA in CA-G.R. SP No. 72962. The CA nullified the aforesaid Order, declaring that RTC, Branch 258, committed grave abuse of discretion in allowing the withdrawal of the Informations without making an independent evaluation on the merits of the case. On final review, this Court affirmed the CA decision in G.R. No. 158236 on September 1, 2004. Unsatisfied, Ligaya filed a motion for reconsideration.<sup>[9]</sup>

Pending the resolution of her motion, Ligaya filed an Urgent Petition for Bail before the RTC of Parañaque City, Branch 257, where the cases were subsequently re-raffled to upon the inhibition of the Presiding Judge of Branch 258. In opposition to the motion, the prosecution presented anew two witnesses, Sabino Frias (Sabino) and Jonas Agnote (Jonas). Sabino testified that, on that fateful day, he heard gunshots and saw three armed men run towards the parked van where Ligaya was. Jonas, on the other hand, revealed that Ligaya approached him to contact a hired killer who would be willing to assassinate respondent. He then contacted a certain "Dagul" to do the job. Jonas was likewise tasked to change the plate number of Ligaya's van. On December 29, 2004, the RTC debunked the petition for bail. <sup>[10]</sup>

Meanwhile, in G.R. No. 158236, the Court finally resolved petitioners' motion for reconsideration, holding that the RTC, Branch 258,<sup>[11]</sup> must make an independent evaluation of the records before allowing the withdrawal of the Informations against petitioners. This impelled Ligaya to file before the RTC, Branch 257, an Urgent Motion to Resolve Anew and on the Merits Previous Motion to Withdraw Criminal Informations Pursuant to the DOJ Finding on Lack of Probable Cause.<sup>[12]</sup>

The aforesaid incidents were assigned for resolution to the RTC, Branch 274, to which the case was re-raffled upon the inhibition of the Presiding Judge of Branch 257.<sup>[13]</sup>

On September 30, 2005, the RTC issued an Order<sup>[14]</sup> dismissing the case for murder, ratiocinating that no probable cause existed to indict them for their crime. Consequently, it lifted the warrants for their arrests and ordered their immediate release from detention. The prosecution's motion for reconsideration was denied on December 28, 2005.<sup>[15]</sup>

Aggrieved, respondent filed a Petition for *Certiorari* before the CA, claiming that the RTC committed grave abuse of discretion in finding that no probable cause existed against the accused.

On May 20, 2009, the CA granted the petition, the dispositive portion of which reads:

**WHEREFORE**, the *Petition for Certiorari* is hereby **GRANTED**. The *Orders* dated 30 September 2005 and 28 December 2005 of the Regional Trial Court of Paranaque City, Branch 274, are **REVERSED and SET ASIDE**. The Executive Judge of the Regional Trial Court of Paranaque City is **DIRECTED** to cause the re-raffle of Criminal Case No. 01- 0921 for appropriate proceedings.

**SO ORDERED.**<sup>[16]</sup>

The CA concluded that the RTC turned a deaf ear to the crucial testimonial evidence of the prosecution that, more likely than not, the crime charged was committed by the accused. It specifically pointed out that Sabino positively identified the accused and related in detail their supposed participation in killing Francis. The court could not also ignore the statements made by Jonas at the risk of incriminating himself. With these, the CA found it necessary that a full blown trial be conducted to unearth the truth behind their testimonies. In disregarding the evidence presented by the prosecution, the CA declared that, indeed, the RTC committed grave abuse of discretion. It, however, clarified that, in making the above pronouncements, the court was not enunciating that the accused were guilty of the crime charged.<sup>[17]</sup> For possible bias and prejudice, the court likewise ordered the inhibition of the Presiding Judge and the subsequent re-raffle of the case.<sup>[18]</sup>

On motion of petitioners, the CA clarified that the reversal of the RTC Orders carried with it the reversal of the trial court's finding that petitioners were entitled to bail.<sup>[19]</sup>

Hence, the present petition raising the following issues:

(a) Sec. 1, Rule 41 of the Rules of Court defines what are to be appealed. **"Appeal may be taken from a judgment or final order that completely disposes of the case."** The September 30, 2005 order of the RTC of Paranaque City dismissing the information for murder **"disposes of the action in its entirety and leaves nothing more to be done to complete the relief sought."** Hence, the remedy of the People of the Philippines is appeal. [*Dy Chun vs. Mendoza, L-25461, October 4, 1968, 25 SCRA 431*] The People and the private complainant did not appeal the September 30, 2005 Joint Order. Hence, the same became final and executory.

(b) **"Once a decision becomes final, even the court which rendered it cannot lawfully alter or modify the same especially where the alteration or modification is material or substantial."** [*Samson vs. Montejo, 9 SCRA 419; De la Cruz vs. Plaridel Surety and Insurance Co., 10 SCRA 727; Ocampo vs. Caluag, 19 SCRA 971*]

(c) On March 24, 2006, two (2) months after the September 30, 2005 final order has become final and executory, the private complainant Fiscal Domingo Orda, Jr. filed with the Court of Appeals a petition for certiorari questioning the orders of September 30, 2005 and December 28, 2005. Certiorari could not be a substitute for a lost appeal. **"Where petitioner**

**has failed to file a timely appeal from the trial court's order, it could not longer avail of the remedy of the special civil action for certiorari in lieu of his lost right of appeal.**" [*Mabuhay Insurance & Guaranty, Inc. vs. Court of Appeals*, 32 SCRA 245; *Mathay, Jr. vs. Court of Appeals*, 312 SCRA 91]

(d) The findings of fact of the Regional Trial Court of Parañaque City that there is no probable cause to warrant the filing of the information against the petitioners cannot be reviewed in the petition for certiorari because only jurisdictional issues may be raised in a certiorari proceedings. In a certiorari petition, **"the court is confined to question of jurisdiction. The reason is that the function of the writ of certiorari is to keep an inferior court within its jurisdiction and not to correct errors of procedure or mistakes in the judge's finding or conclusion."** [*Pacis vs. Avera*, 18 SCRA 907; *Albert vs. Court of First Instance of Manila, Brancg VI*, 23 SCRA 948; *Estrada vs. Sto. Domingo*, 28 SCRA 890]

(e) Moreover, **"the findings and conclusions of the trial court command great respect and weight because the trial court has the opportunity to see and observe the demeanor of witnesses which the appellate court does not have."** [*People vs. Cristobal*, L-13062, January 28, 1961, 1 SCRA 151; *Medina vs. Collector of Internal Revenue*, L-151113, January 28, 1961, 1 SCRA 302; *Tuason vs. Luzon Stevedoring Company, Inc.*, L-13541, January 28, 1961, 1 SCRA 189; *People vs. Sarmiento*, L-19146, May 31, 1963, 8 SCRA 263]

(f) The Joint Order of September 30, 2005 was issued by the Regional Trial Court in compliance with the decision of the Supreme Court that the trial court must act on the issue of probable cause using its own discretion. Reversing the September 30, 2005 Joint Order is like reversing the Supreme Court.

(g) The Court of Appeals denied the motion for reconsideration citing Sec. 1, Rule 41 of the Rules of Court providing **"that an order dismissing the action without prejudice is not appealable."** The Court of Appeals ruled that the remedy from the finding of fact and final order dismissing the information **"is to file a special civil action under Rule 65."**

(h) The final order of September 30, 2005 does not state that the dismissal is **"without prejudice."** There is nothing in the order of September 30, 2005 from which we could derive that the dismissal of the action is **"without prejudice."** While it may be true that the defense of double jeopardy may not be invoked by the petitioners simply because they were not yet arraigned, it does not follow that another information for murder could be filed against them on the same evidence that the court dismissed the information for lack of probable cause. A new information could still be filed against the petitioners but the same must not be based on the same evidence already repudiated in the September 30, 2005 order.<sup>[20]</sup>