

FIRST DIVISION

[G.R. No. 157952, September 08, 2009]

**JOWETT K. GOLANGCO, PETITIONER, JONE B. FUNG,
RESPONDENT.**

DECISION

BERSAMIN, J.:

We have before us a petition for review on *certiorari* seeking the review of the decision dated September 12, 2002 (dismissing the petitioner's petition for *certiorari*)^[1] and the resolution dated April 2, 2003 (denying the petitioner's motion for reconsideration),^[2] both promulgated by the Court of Appeals in C.A.-G.R. SP No. 66616 entitled *Jowett K. Golangco v. The Presiding Judge of Branch 53, Regional Trial Court of Manila and Jone B. Fung*.

Antecedents

C.A.-G.R. SP No. 66616 was a special civil action for *certiorari* commenced by the petitioner to assail the order issued by the Regional Trial Court (RTC), Branch 53, in Manila in Criminal Case No. 95-145703 entitled *People v. Jone B. Fung*, whereby the RTC declared the Prosecution to have terminated the presentation of further evidence and required the Prosecution to file a written offer of evidence within 20 days, furnishing a copy of the offer to the accused who in turn had to comment on the offer within 15 days from receipt.

Criminal Case No. 95-145703, a prosecution for libel initiated by the petitioner as the complainant against the respondent, was commenced in 1995.^[3] Allegedly, the respondent had issued an office memorandum dated May 10, 1995 maliciously imputing against the petitioner the commission of bribery and had sent copies of the memorandum to the petitioner's superiors in the Philippine Overseas Employment Administration (POEA) and to other public officers and personalities not connected with the POEA, causing damage and prejudice to the petitioner.^[4]

After almost 6 years, the Prosecution had presented only two witnesses in Criminal Case No. 95-145703. On February 16, 2001, the Prosecution requested that a subpoena *ad testificandum* be issued to and served on Atty. Oscar Ramos, Resident Ombudsman of the POEA, to compel him to testify in the criminal case on February 20, 2001. The hearing of February 20, 2001 was, however, reset to May 23, 2001 due to the unavailability of Atty. Ramos.

On May 23, 2001, the Prosecution still failed to present Atty. Ramos as its witness because no subpoena had been issued to and served on him for the purpose. Consequently, the RTC judge issued an order terminating the Prosecution's

presentation of evidence,^[5] as follows:

ORDER

When the case was called for hearing, the accused is in court with his lawyer Atty. Benigno Palamos. Private prosecutor Atty. Agripino Baybay is in court but he has no witnesses today. He manifested that he has to present Atty. Oscar Ramos, but since the last hearing on February 20, to this date he has not asked for any subpoena. Defense counsel moves to terminate the presentation of prosecution evidence in view of the failure of the prosecution to present witnesses despite numerous postponements. The private prosecutor asks for another continuance. The records show that on January 23, 2001 this Court gave a stern warning to the prosecutor that it is giving one final postponement for the production of witnesses. Yet the prosecution caused the service of the subpoena too late for the hearing on February 20. For the next three months, the prosecution simply did not apply for a subpoena. The Court finds that the intention to delay the proceedings is evident. As prayed for, the prosecution is declared to have terminated further evidence.

The prosecution is given 20 days from today to make its formal offer with copy furnished the defense counsel who is given 15 days from receipt to make his comment and thereafter the offer will be deemed submitted for resolution.

SO ORDERED.

The petitioner, by his lonesome, assailed on *certiorari* in the Court of Appeals the order dated May 23, 2001, claiming that the RTC judge thereby committed grave abuse of discretion for not issuing the subpoena to require Atty. Ramos to appear and testify in the May 23, 2001 hearing. He contended that his prior request for the subpoena for the February 20, 2001 hearing should have been treated as a continuing request for the subpoena considering that the *Rules of Court* did not require a party to apply for a subpoena again should it not be served in the first time.^[6]

In its decision dated September 12, 2002, the Court of Appeals rebuffed the petitioner and dismissed the petition for *certiorari*, holding:

Axiomatically, any request for a subpoena to a witness must indicate the date and time when the witness must appear in court to give his or her testimony. It is on the basis of that request that the court personnel prepares the subpoena indicating the title of the case, the date and time for the appearance of the intended witness. This is where petitioner fell into error. His urgent request for subpoena (Annex "A") failed to contain the date and time when the intended witness, Atty. Oscar Ramos, must appear in court to testify.

Even then, granting that the subpoena issued for February 20, 2001 hearing was properly served but which hearing was later on postponed, there is still a need to ask for a new subpoena to the same witness for the next scheduled hearing. The court cannot be tasked to guess whether or not petitioner still intends to present the witness at the next hearing. An intention to still present the witness necessarily requires another request for a subpoena.

Moreover, the case was last heard on January 23, 2001 prior to the February 20, 2001 hearing. *Apropos*, to ask for a subpoena to his next witness on February 16, 2001, for the hearing on February 20, 2001 was rather late. As the complainant in the case, petitioner should have exercised due diligence or proper zeal in the prosecution of his case which has long been pending for five (5) years, let alone that it was the last chance given by the court to the prosecution to the prosecution to produce its witness on February 20, 2001 on account of its previous failure to do so.

Then, again, as correctly observed by the *court a quo*, from February 20, 2001 to May 23, 2001, a good three (3) months period passed without the prosecution requesting for a subpoena for its intended witness. When the respondent court, as a consequence, deemed the prosecution evidence terminated and required it to formally offer its evidence, it was not committing any error nor abuse of discretion. Here, petitioner created its own predicament and should suffer from its adverse effect.^[7]

Hence, this appeal.

Issue

The issue is whether the Court of Appeals correctly ruled on the petition for *certiorari* of the petitioner.

Ruling of the Court

We find no reversible error on the part of the Court of Appeals.

I

Before dealing with the petition for review, we point out the gross procedural misstep committed by the petitioner in the Court of Appeals.

The petitioner did not join the People of the Philippines as a party in his action for *certiorari* in the Court of Appeals. He thereby ignored that the People of the Philippines were indispensable parties due to his objective being to set aside the trial court's order dated May 23, 2001 that concerned the public aspect of Criminal Case No. 95-145703. The omission was fatal and already enough cause for the summary rejection of his petition for *certiorari*.