

## SECOND DIVISION

[ G.R. No. 154557, February 13, 2008 ]

**PEOPLE OF THE PHILIPPINES, Petitioner, vs. The HONORABLE COURT OF APPEALS, 12<sup>th</sup> DIVISION, RICO LIPAO, and RICKSON LIPAO, Respondents.**

### D E C I S I O N

**VELASCO JR., J.:**

Where a court acquired jurisdiction over an action, its jurisdiction continues to the final conclusion of the case. Such jurisdiction is not affected by new legislation placing jurisdiction over such dispute in another court or tribunal unless the statute provides for retroactivity.<sup>[1]</sup>

Before us is a Petition for Certiorari under Rule 65, seeking to nullify the June 13, 2002 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 17275 which set aside the July 25, 1994 Judgment<sup>[3]</sup> of the Surigao City Regional Trial Court (RTC), Branch 32 and dismissed Criminal Case No. 551 entitled *People of the Philippines v. Rico Lipao and Rickson Lipao* for violation of Section 68 of Presidential Decree No. (PD) 705,<sup>[4]</sup> as amended by Executive Order No. (EO) 277.<sup>[5]</sup>

On February 24, 1992, private respondents Rico and Rickson Lipao were indicted for and pleaded not guilty to violation of Sec. 68 of PD 705, as amended by EO 277. The Information in Criminal Case No. 551 reads:

That on or about the 21<sup>st</sup> day of October 1991 in Cagdianao, Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused Rico Lipao and Rickson Lipao without legal documents as required under existing forest laws and regulations, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously possess without license eight (8) pieces of round timbers and 160 bundles of firewood with a market value of P3,100.00, said forest products not covered with legal transport document, and willfully and unlawfully load these forest products in the pumpboat "Rickjoy" owned by Rico Lipao, nor the accused Rico Lipao and Rickson Lipao holders of a license issued by the DENR, to the prejudice of the government in the sum of P3,100.00.

Contrary to law. The offense is punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code, as provided under Section 68 of PD No. 705.<sup>[6]</sup>

The offense charged is punishable under Art. 309 of the Revised Penal Code which provides:

Art. 309. *Penalties*.—Any person guilty of theft shall be punished by:

x x x x

2. The penalty of *prisiñEn correccional* in its medium and maximum period, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

*PrisiñEn correccional* in its medium period is imprisonment from 2 years, 4 months and 1 day to 4 years and 2 months while *prisiñEn correccional* in its maximum period is imprisonment from 4 years, 2 months and 1 day to 6 years.

Parenthetically, during the proceedings in Criminal Case No. 551 and before the RTC rendered its Judgment, Republic Act No. (RA) 7691<sup>[7]</sup> took effect on April 15, 1994 or 15 days after its publication on March 30, 1994. RA 7691 expanded the exclusive original jurisdiction of the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs), and Municipal Circuit Trial Courts (MCTCs) in criminal cases to cover all offenses punishable with imprisonment not exceeding six years irrespective of the amount of fine and regardless of other imposable accessory or other penalties, including civil penalties arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof. Before the amendments of RA 7691, Batas Pambansa Blg. 129 entitled *The Judiciary Reorganization Act of 1980* provided that the MeTC, MTC, and MCTC shall have exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than PhP 4,000, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof.

On July 25, 1994, the RTC rendered its Judgment, finding private respondents guilty beyond reasonable doubt of the offense charged. The dispositive portion reads:

WHEREFORE, premises considered, the Court finds the accused Rico Lipao and Rickson Lipao both guilty beyond reasonable doubt of the Violation of Section 68 of Presidential Decree No. 705 as amended by Executive Order No. 277, Series of 1987, in relation to Articles 309 and 310 of the Revised Penal Code, and hereby sentences each of them to an indeterminate penalty of from four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to nine (9) years, four (4) months and one (1) day of prision mayor, as maximum; and each to pay one-half of the costs.

The posts and firewood in question, or the proceeds thereof if sold at public auction are hereby forfeited in favor of the Government.

SO ORDERED.<sup>[8]</sup>

Private respondents seasonably interposed their appeal before the CA, docketed as CA-G.R. CR No. 17275. They argued that private respondent Rickson was subjected to an illegal search and seizure of the round posts and firewood which cannot be used as evidence against him. They insisted that the Department of Environment and Natural Resources (DENR) personnel together with some Philippine National

Police personnel who stopped private respondent Rickson did not have a search warrant. They also opined that the “plain sight” or “open review” doctrine is inapplicable as the posts and firewood are not incriminatory, more so as firewood is available and sold in public markets without the requirement of any permit from the DENR.

Moreover, private respondents argued that the prosecution failed to prove their lack of license to possess timber. They contended that since private respondent Rico is merely the owner of the pumpboat and was not present when the posts and firewood were seized, he could never be held liable for illegal possession of timber as he was never in possession of the round posts. Relying on *People v. Macagaling*,<sup>[9]</sup> private respondents asserted that constructive possession of forest products is no longer the rule in successfully prosecuting offenses for violation of the Forestry Code.

On June 13, 2002, the CA rendered the assailed Decision, granting the appeal of private respondents and dismissing the case before it on the ground of lack of jurisdiction of the RTC. The decretal portion reads:

WHEREFORE, upon the premises, the Decision appealed from is SET ASIDE. The instant criminal case is DISMISSED for lack of jurisdiction.

SO ORDERED.<sup>[10]</sup>

In sustaining the appeal of private respondents, the CA did not rule on the assigned errors or on the merits of the case. It anchored its dismissal of the criminal case on the lack of jurisdiction of the RTC to hear and decide it.

Thus, People of the Philippines filed the instant petition, raising the sole assignment of error that:

RESPONDENT COURT OF APPEALS ARBITRARILY AND WHIMSICALLY DISMISSED THE CRIMINAL CASE AGAINST PRIVATE RESPONDENTS ON THE GROUND THAT THE REGIONAL TRIAL COURT HAD NO JURISDICTION OVER THE CASE IN VIEW OF REPUBLIC ACT NO. 7691 WHICH BECAME EFFECTIVE ON APRIL 15, 1994.<sup>[11]</sup>

Petitioner People posits that the passage of RA 7691 did not *ipso facto* take jurisdiction away from the RTC to hear and decide the instant criminal case instituted prior to the passage of said law expanding the jurisdiction of the MTCs.

On the other hand, in their Comment and Memorandum, private respondents do not meet head on the sole issue raised by petitioner on jurisdiction but instead argue that the instant petition should have been outrightly dismissed on the grounds of noncompliance with the requirements for a special civil action of certiorari under Rule 65 and the requisites for a valid verification. Private respondents asseverate that the instant petition cannot be entertained as no motion for reconsideration has been filed before the CA, which is a plain, speedy, and adequate remedy available to petitioner and an indispensable and jurisdictional requirement for the extraordinary remedy of certiorari, relying on *Labudahon v. NLRC*.<sup>[12]</sup> Moreover, they contend that an action for certiorari under Rule 65 is the wrong remedy as the dismissal by the CA on lack of jurisdiction did not constitute double jeopardy and, thus, an appeal

through a Petition for Review on Certiorari under Rule 45 is the proper remedy. They maintain that the Office of the Solicitor General (OSG), while undoubtedly the counsel for the State and its agencies, cannot arrogate unto itself the authority to execute in its name the certificate of non-forum shopping for a client office, which in the instant case is the DENR.

The arguments of private respondents are unmeritorious.

On the issue of the propriety of the resort to a special civil action for certiorari under Rule 65 instead of a petition under Rule 45, we find that Rule 65 is the proper remedy. The CA ruled that the RTC was ousted of its jurisdiction as a result of the enactment of RA 7691. While the defense of lack of jurisdiction was never raised by private respondents before the RTC and the CA, the CA nevertheless proceeded to acquit private respondents based on the new law. It is quite glaring from Sec. 7 of RA 7691 that said law has limited retroactivity only to civil cases. As such, the CA indeed committed grave abuse of discretion as it acted in an arbitrary and patently erroneous exercise of judgment equivalent to lack of jurisdiction. Hence, the use of Rule 65 is proper.

On other procedural issues, we also find for petitioner. First, we reiterate our holding in *Santiago* and *City Warden of the Manila City Jail* that the signature by the Solicitor General on the verification and certification of non-forum shopping in a petition before the CA or with this

Court is substantial compliance of the requirement under Sec. 4,<sup>[13]</sup> Rule 7 of the 1997 Rules of Civil Procedure, considering that the OSG is the legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities, more so in a criminal case where the People or the State is the real party-in-interest and is the aggrieved party.

*Second*, while it is true that petitioner did not file a motion for reconsideration of the assailed CA Decision which normally is a ground for dismissal for being premature<sup>[14]</sup> and to accord respondent CA opportunity to correct itself,<sup>[15]</sup> yet the rule admits of exceptions, such as where, under the circumstances, a motion for reconsideration would be useless,<sup>[16]</sup> and where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government.<sup>[17]</sup>

In the instant case, these exceptions are present; thus, the propriety of the instant petition. The assailed CA Decision rendered on the ground of lack of jurisdiction clearly bespeaks that any motion for reconsideration is useless. For one, the issue of lack of jurisdiction was never raised by private respondents in their Brief for the Accused-Appellants,<sup>[18]</sup> but was considered *motu proprio* by the CA. For another, the issues and errors raised by private respondents were not considered and much less touched upon by the CA in its assailed Decision.

But of more importance, as this Court held in *Vivo v. Cloribel*,<sup>[19]</sup> a motion for reconsideration is not necessary before a petition for certiorari can be filed when the respondent court took almost eight years to the day to resolve private respondents' appeal. It is not only the accused who has a right to a speedy disposition of his case, but the prosecution or the State representing the People also has and must be