

THIRD DIVISION

[G.R. No. 140904, October 09, 2000]

RENE S. ONG, MAGDALENO B. ALBARRACIN, JR., PETRONIO C. AALIWIN AND J. O. NERIT, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.

DECISION

MELO, J.:

Before us is a petition for *certiorari* and prohibition with prayer for issuance of a writ of preliminary injunction, wherein petitioners, accused before the Metropolitan Trial Court (MeTC) of Makati City, charge said court with having committed grave abuse of discretion when it denied their demurrer to evidence.

The facts of the case are as follows:

On February 8, 1993, Zeny Alfonso purchased a paper bag-making machine for P362,000.00 from the Solid Cement Corporation. When she went to the corporation's Antipolo plant, however, no machine could be given to her, it appearing that the machine sold had been earlier mortgaged to a creditor, who, unfortunately, refused to release the mortgage. Herein petitioners offered to return the money paid by Mrs. Alfonso but she refused and instead filed a criminal complaint with the City Prosecutor of Makati.

The City Prosecutor dismissed the complaint on the ground that liability, if any, would be civil and not criminal in nature. This dismissal was, however, reversed by the Department of Justice.

On October 18, 1994, an Information for estafa and other deceit based on Article 318 of the Revised Penal Code was filed with the MeTC of Makati City. After pre-trial, the prosecution presented as its sole witness complainant Zeny Alfonso. The prosecution then formally offered its documentary evidence and rested its case. The admissibility of these documents was questioned by petitioners.

The disputed documents are alleged photo copies of (1) the approval of the sale of the paper bag-making machine supposedly signed by petitioners; (2) an official receipt of Solid Cement Corporation evidencing payment of P362,000.00; (3) a plant gate pass from one J.P. Valencia dated February 16, 1993 for entry into the Antipolo compound and pull-out of the machine; (4) a letter from one Atty. Maximino Robles demanding delivery of the machine to the complainant; (5) a letter of Solid Cement's Rene S. Ong offering to return P362,000.00 plus interest; (6) a letter from Atty. Robles informing Solid Cement of complainant's refusal to accept the refund of the P362,000.00; (7) a memorandum from five officers or employees of Solid Cement Corporation recommending the sale of the paper bag-making-machine; (8) another gate-pass dated December 3, 1992 from one Ramon Enriquez allowing the

pull out of the machine; (9) a letter from one Lorenzo P. Ligot thanking Solid Cement, through one Peter Aaliwin, for the former's grant of a right of first refusal; and (10) a copy of the resolution dated July 26, 1993 of the Provincial Prosecutor's Office of Rizal. The defense objected to the admission of these pieces of evidence, claiming that the same were only unauthenticated photocopies of the originals.

On July 12, 1996, petitioners filed a motion for leave to file demurrer to evidence, attaching thereto their demurrer. In their pleading, petitioners stressed that all the above-mentioned documents being uncertified photocopies bearing unidentified or unauthenticated signatures are inadmissible in evidence. Without ruling on the motion for leave to file demurrer, the MeTC, on August 19, 1996, held:

WHEREFORE, the instant demurrer is hereby denied and the motion to hold departure order of all accused Granted. Let a copy of this Order be sent to the Commissioner of Bureau of Immigration and Deportation for proper disposition and implementation against the accused RENE ONG, MAGDALENO ALBARRACIN, JR., PETRONIO C. AALIWIN and J.O. NERIT of Solid Cement Corporation, No. 168 Salcedo Street, 3rd Floor, Golden Rock Building, Makati City.

(pp. 113-114, Rollo.)

In its Order denying the demurrer to evidence, MeTC Judge Felicidad Y. Navarro-Quiambao summarized private complainant's testimony as follows:

The prosecutor presented the private complainant Zeny Alfonso who testified that on February 8, 1993, she was awarded by the accused the sale of a Paper Bag Making Machine including its spare parts. On February 16, 1993, she paid in full the purchase price of the machine including the charges for its freight to Cebu in the amount of P362,000.00 and as a consequence of said payment she was issued a Plant Gate Pass for the pull out of shipment of the machine to Cebu; that the following day, she proceeded to the plant site of the Solid Cement Corporation in Antipolo where she was told that accused Rene S. Ong has ordered to stop and discontinue with the shipment of the machine; that on the same day, she rushed to see Mr. Ong in Makati and she was told to wait for a week; that on March 1, 1993, she went again to Mr. Ong who informed her to go back to the plant site for final arrangement regarding the shipment of the paper bag machine so she proceeded to the plant only to be told that the machine cannot be released on order of Mr. Ong; that upon the demand of her lawyer to the Solid Corporation for its compliance with their obligation under the transaction, Mr. Ong offered a compromise which was turned down by her.

(pp. 112-113, Rollo.)

The MeTC, in fact, found that there was a *prima facie* case against petitioners on the basis of the documents submitted by the prosecution, stating:

The Court noted from the documentary evidence on record that the machine subject of the transaction between the complainant and the accused is mortgaged to another creditor, who, incidentally, refused to release the mortgage on said subject machine. Indeed, this strongly

suggest (sic) the existence of a *prima facie* case that would warrant a trial on the merits. Accordingly, the motion for hold departure order is hereby Granted.

(p. 113, Rollo.)

Acting on a petition for *certiorari* and prohibition filed by the accused, the Regional Trial Court of Makati, per Judge Teofilo Guadiz, Jr., reversed the above ruling in its order dated May 19, 1997, disposing:

WHEREFORE, in view of the foregoing, the petition is hereby granted. The Order dated August 19, 1996 denying the Demurrer to Evidence and the Order dated September 18, 1996, insofar as it declares the existence of cause to hold the petitioners for further trial, are hereby set aside and declared null and void. The respondent judge is hereby ordered to dismiss Criminal Case No. 157290 entitled People of the Philippines v. Rene Ong, et al.

(p. 159, Rollo.)

The *Guadiz* resolution was raised to the Court of Appeals by the People. On April 8, 1999, the 13th Division thereof (Mabutas [*P*], Aquino, and Rivera, *JJ.*) rendered a reversal decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is hereby GRANTED - and the assailed resolution (dated May 19, 1997) and order (dated October 16, 1997) of the respondent judge SET ASIDE. The writ of preliminary injunction issued by this Court on June 5, 1998 is made permanent. The private respondents herein are given the option to either present their evidence (in Criminal Case No. 157290 which is reinstated) before the trial court below (Metropolitan Trial Court) or to submit the case for decision based solely on the prosecutor's evidence.

(p. 71, Rollo.)

Petitioners submit that the Court of Appeals acted contrary to law and jurisprudence and committed grave abuse of discretion in:

- 1) finding that appeal and not *certiorari* was the remedy that should have been availed of by petitioners;
- 2) finding that RTC Judge Teofilo Guadiz, Jr. erred in evaluating the prosecution's evidence for sufficiency and inadmissibility;
- 3) not finding that the RTC resolution dated May 19, 1997 was an acquittal and not applying double jeopardy in their favor;

The petition is meritorious.

In setting aside the regional trial court's decision which ordered the MeTC to dismiss the criminal case filed against petitioners, the Court of Appeals held that petitioners, after the denial by the MeTC of their demurrer to evidence, should not have filed a petition for *certiorari* with the regional trial court. In its words:

As pointed out, the Supreme Court, in the case of *Joseph v. Villaluz* (89 SCRA 324), held that it would not annul an interlocutory order denying a

motion to dismiss in a criminal case. Appeal is the proper remedy of the petitioners in order to have the findings of fact reviewed by a superior court (*Manalo v. Mariano*, 69 SCRA 80). Such ruling was a reiteration of an earlier one in *People v. Romero* (22 Phil. 565) wherein the Highest Tribunal stressed that the question of whether or not the evidence by the prosecution is sufficient to convince the court that the accused is guilty beyond reasonable doubt of the crime charged, rests entirely within the sound judgment of the trial court. The error, if any is committed by the denial of the demurrer to evidence, can only be corrected by appeal (*Cruz v. People*, 144 SCRA 677).

Similarly, the Supreme Court held in *People v. Court of Appeals* (119 SCRA 162) that it has been the long settled rule that *certiorari* does not lie to challenge the trial court's interlocutory order denying the accused's motion to dismiss. "The appellate courts will not review in such special civil action the prosecution's evidence and decide in advance that such evidence has or has not yet established the guilt of the accused beyond reasonable doubt. The orderly procedure prescribed by the Rules of Court is for the accused to present his evidence after which the trial court, on its own assessment of the evidence submitted by both the prosecution and defense, will then properly render its judgment of acquittal or conviction. If the verdict is one of acquittal, the case ends there. But if it is one of conviction, then appeal is the proper recourse (*Cruz v. People, supra*).

(pp. 64-65, Rollo.)

In other words, the position of the Court of Appeals is to the effect that after the denial of their demurrer to evidence, petitioners instead of filing a petition for *certiorari* with the regional trial court, should have presented their evidence and in case of an adverse decision, appealed the same to the regional trial court.

Likewise, the Court of Appeals brushed aside petitioners' invocation of their right against double jeopardy, stating that the order of the regional trial court dismissing the criminal case filed against petitioners did not amount to their acquittal. Held thus the appellate court:

As aptly posited by the petitioner (The People) the requisites that must concur for legal jeopardy to attach are: (a) a valid complaint or information; (b) a court of competent jurisdiction; (c) the accused has pleaded to the charge; and (d) the accused has been convicted or acquitted, or the case dismissed or terminated without the express consent of the accused (*People v. Gines*, 197 SCRA 481, *De la Rosa v. Court of Appeals*, 253 SCRA 499). The fourth requisite is lacking, because respondent court's resolution of May 19, 1997 is a "fruit" emerging from a grave abuse of discretion - thus it cannot ripen to an acquittal of the private respondents, whose demurrer to evidence had been denied by the trial court below. It is true that an accused is presumed innocent until his guilt is shown beyond reasonable doubt. However, after the prosecution has adduced evidence, the constitutional presumption of innocence must yield to what has been so amply and persuasively demonstrated (*People v. Andal*, 70 SCRA 30). The respondent judge