

FIRST DIVISION

[G.R. No. 171175, October 09, 2009]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ARTURO F. DUCA, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before this Court is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure which seeks to set aside and annul the Decision^[1] dated November 23, 2005 rendered by the Court of Appeals (CA) in *CA-G.R. CR No. 28312*.

The CA decision reversed the decision^[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in *Criminal Case No. 2003-0194-D*^[3] which affirmed an earlier decision^[4] of the Municipal Circuit Trial Court of San Fabian-San Jacinto, Pangasinan, convicting respondent Arturo Duca of the crime of falsification under Article 171 of the Revised Penal Code.

The facts as found by the CA are quoted as follows:

It appears that Arturo Duca, together with his mother, Cecilia Duca, were charged of the crime of Falsification of Official Document defined and penalized under *Article 172*, in relation to *Article 171, paragraph 2* of the *Revised Penal Code* in an Information which reads:

"That on or about December 10, 2001 in the Municipality of San Fabian, Province of Pangasinan, Philippines, within the jurisdiction of this Honorable Court, the said accused confederating together and mutually abiding each other, with intent to cause damage, did then and there, willfully, unlawfully and feloniously cause the preparation of a Declaration of Real Property over a bungalow type residential house covered by Property Index No. 013-32-027-01-116131 of the Municipal Assessor's Office of San Fabian, Pangasinan by making it appear that the signature appearing on the sworn statement of owner is that of Aldrin F. Duca when the truth of the matter is not because the latter was abroad at that time having arrived in the Philippines only on December 12, 2001, and it was accused Arturo F. Duca who affixed his own signature thereon to the damage and prejudice of the undersigned private complainant Pedro Calanayan."

Upon being arraigned, both the accused pleaded 'not guilty'. Then trial on the merits ensued.

The evidence for the prosecution shows that sometime in 1999, Pedro Calanayan (hereinafter "Calanayan"), private complainant herein, filed an action for ejectment and damages against Cecilia F. Duca, Ruel F. Duca, Arsenio F. Duca and Vangie F. Duca before the 4th Municipal Circuit Trial Court (MCTC) of San Fabian-San Jacinto, Pangasinan, docketed as Civil Case No. 960 (SF-99). The case was decided in favor of Calanayan. There being no appeal interposed by the aforesaid defendants, the said decision became final and executory. On November 22, 1999, a writ of execution was issued by the MCTC to enforce the decision. On February 29, 2000, the money judgment was likewise satisfied with the public auction of the lot owned by Cecilia Duca covered by TCT No. 233647. On March 1, 2000, a certificate of sale was issued in favor of Jocelyn Barque, the highest bidder in the auction sale.

On October 19, 2001, Cecilia Duca filed an action for the Declaration of Nullity of Execution and Damages with prayer for Writ of Injunction and Temporary Restraining order against Sheriff IV Vinez Hortaleza and Police Officers Roberto Vical, Alejandro Arevalo, Emilio Austria, Victor Quitales, Crisostomo Bonavente and Calanayan. The case was docketed as Civil Case No. 2000-0304-D.

When the said case was heard, Cecilia Duca testified to the effect that the house erected on the lot subject of the ejectment case is owned by her son Aldrin Duca. In support of such claim she presented Property Index No. 013-32-027-01-116131 (*Exhibit "B"*). At the back of the said exhibit is a sworn statement showing that the current and fair market value of the property, which is a bungalow, is P70,000.00 with the signature affixed on top of the typewritten name Aldrin F. Duca and subscribed and sworn to before Engr. Reynante Baltazar, the Municipal Assessor of San Fabian, Pangasinan, on December 10, 2001. The signature on top of the typewritten name Aldrin F. Duca is that of Arturo Duca. According to the prosecution, Arturo made it appear that the signature is that of his brother Aldrin who was out of the country at that time. Aldrin arrived in the Philippines only on December 12, 2001, as evidenced by a certification from the Bureau of Immigration, Manila. Arturo even made it appear that his Community Tax Certificate (CTC) No. 03841661 issued on December 10, 2001 is that of his brother Aldrin. That because of the misrepresentation, Cecilia and Arturo were able to mislead the RTC such that they were able to get a TRO against Sheriff Hortaleza and the policemen ordering them to stop from evicting the plaintiffs from the property in question.

Both accused denied that they falsified the signature of Aldrin Duca. Cecilia testified that she had no participation in the execution as she was in Manila at that time.

On the other hand, Arturo testified that the signature atop the name Aldrin Duca was his. However, he intersposed the defense that he was

duly authorized by the latter to procure the said tax declaration.

On April 3, 2003, the MCTC of San Fabian-San Jacinto rendered a decision, dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Arturo F. Duca guilty beyond reasonable doubt of the crime of falsification defined and penalized under Article 171 of the Revised Penal Code and hereby imposes upon said accused a prison term of two years, four months and one day to six (6) years of Prison Correccional and a fine of P2,000.00. Accused Cecilia is acquitted for lack of evidence.

The accused Arturo F. Duca is hereby ordered to pay to the complaining witness actual damages in the amount of P60,000.00 moral damages of P150,000.00 plus exemplary damages in the amount of P100,000.00 plus cost.

SO ORDERED."

Dissatisfied with the decision, Arturo Duca appealed. On March 24, 2004, the RTC of Dagupan City, Branch 44, rendered a decision, disposing the case as follows:

"WHEREFORE, the decision dated April 3, 2003 of the 4th Municipal Circuit Trial Court, San Fabian-San Jacinto, Pangasinan convicting accused Arturo F. Duca of the crime of Falsification defined and penalized under Article 171 of the Revised Penal Code and imposing upon said accused an imprisonment of two years, four months and one day to six (6) years of Prison Correccional and a fine of P2,000.00, and ordering him to pay to the complaining witness actual damages in the amount of P60,000.00, moral damages in the amount of P150,000.00 plus exemplary damages in the amount of P100,000.00 plus cost, is AFFIRMED.

x x x.

SO ORDERED."^[5]

Aggrieved with the ruling of the RTC, Duca elevated the case to the CA *via* a petition for review. On November 23, 2005, the CA promulgated its assailed decision acquitting Duca of the crime charged and reversing the RTC decision. The CA held:

However, the prosecution failed to establish the fact that Arturo was not duly authorized by Aldrin in procuring the tax declaration. On the contrary, the defense was able to establish that Arturo Duca was duly authorized by his brother Aldrin to secure a tax declaration on the house

erected on the land registered under their mother's name.

xxx xxx xxx

From the foregoing testimony, it can be deduced that Arturo could not have falsified the Tax Declaration of Real Property under Property Index No. 013-32-027-01-116B1 (Exhibit "B") by making it appear that Aldrin Duca, his brother, participated in the accomplishment of the said document since he was actually acting for and in behalf of the latter. It must be noted that as early as June 2001, Arturo has already been authorized by Aldrin; albeit verbally, to register the house in the latter's name as he cannot do it personally as he was abroad. This authority of Arturo was confirmed by the latter's execution of an Affidavit dated January 19, 2002 confirming the procurement of the said tax declaration (Exhibit "6") as well as a Special Power of attorney executed on June 17, 2002 (Exhibit "7"). Thus, what appeared to be defective from the beginning had already been cured so much so that the said document became valid and binding as an official act of Arturo.

If Arturo did not state in the Tax Declaration in what capacity he was signing, this deficiency was cured by Aldrin's subsequent execution of Exhibits "6" and "7".

The RTC's conclusion that the special power of attorney executed by Aldrin was a mere afterthought designed to extricate Arturo from any criminal liability has no basis since from the very start, it has been duly established by the defense that Aldrin had verbally instructed Arturo to cause the execution of Exhibit "B" for the purpose of registering his house constructed on his mother's lot for taxation purposes.^[6]

Hence, the instant petition anchored on this sole ground:

PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND HAD ACTED WITHOUT JURISDICTION WHEN IT RESOLVED PRIVATE RESPONDENT ARTURO F. DUCA'S APPEAL WITHOUT GIVING THE PEOPLE OF THE PHILIPPINES THROUGH THE OFFICE OF THE SOLICITOR GENERAL THE OPPORTUNITY TO BE HEARD THEREON.^[7]

Petitioner argues that the prosecution was denied due process when the CA resolved the respondent's appeal without notifying the People of the Philippines, through the Solicitor General, of the pendency of the same and without requiring the Solicitor General to file his comment. Petitioner contends that once the case is elevated to the CA or this Court, it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People. Thus, the CA gravely abused its discretion when it acted on respondent's appeal without affording the prosecution the opportunity to be heard. Consequently, the decision of the CA acquitting respondent should be considered void for being violative of due process.

In his Comment,^[8] respondent argues that there was no denial of due process

because the prosecution was properly represented by the Office of the Provincial Prosecutor and a private prosecutor who handled the presentation of evidence under the control and supervision of the Provincial Prosecutor. Since the control and supervision conferred on the private prosecutor by the Provincial Prosecutor had not been withdrawn, the Solicitor General could not claim that the prosecution was not afforded a chance to be heard in the CA. According to the respondent, he should not be prejudiced by the Provincial Prosecutor's failure to inform the Solicitor General of the pendency of the appeal.

The petition is impressed with merit.

The authority to represent the State in appeals of criminal cases before the CA and the Supreme Court is **solely** vested in the Office of the Solicitor General (OSG). Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code explicitly provides, *viz.*:

SEC. 35. *Powers and Functions.* - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. x x x It shall have the following specific powers and functions:

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings;** represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (emphasis supplied)

Jurisprudence has been consistent on this point. In the recent case of *Cariño v. De Castro*,^[9] it was held:

In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.^[10]

Likewise, in *City Fiscal of Tacloban v. Espina*,^[11] the Court made the following pronouncement:

Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the