

SECOND DIVISION

[G.R. No. 186001, October 02, 2009]

**ANTONIO CABADOR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

ABAD, J.:

Before the Court is a petition for review on *certiorari*, assailing the Court of Appeals' (CA) Decision of August 4, 2008^[1] and Resolution of October 28, 2008^[2] in CA-G.R. SP 100431 that affirmed the August 31, 2006 Order^[3] of the Regional Trial Court (RTC) of Quezon City.

The facts are not disputed.

On June 23, 2000 the public prosecutor accused petitioner Antonio Cabador before the RTC of Quezon City in Criminal Case Q-00-93291 of murdering, in conspiracy with others, Atty. Jun N. Valerio.^[4] On February 13, 2006, after presenting only five witnesses over five years of intermittent trial, the RTC declared at an end the prosecution's presentation of evidence and required the prosecution to make a written or formal offer of its documentary evidence within 15 days from notice.^[5] But the public prosecutor asked for three extensions of time, the last of which was to end on July 28, 2006. Still, the prosecution did not make the required written offer.

On August 1, 2006 petitioner Cabador filed a motion to dismiss the case,^[6] complaining of a turtle-paced proceeding in the case since his arrest and detention in 2001 and invoking his right to a speedy trial. Further, he claimed that in the circumstances, the trial court could not consider any evidence against him that had not been formally offered. He also pointed out that the prosecution witnesses did not have knowledge of his alleged part in the crime charged.

Unknown to petitioner Cabador, however, four days earlier or on July 28, 2006 the prosecution asked the RTC for another extension of the period for its formal offer, which offer it eventually made on August 1, 2006, the day Cabador filed his motion to dismiss.^[7]

On August 31, 2006 the RTC issued an Order treating petitioner Cabador's August 1, 2006 motion to dismiss as a demurrer to evidence. And, since he filed his motion without leave of court, the RTC declared him to have waived his right to present evidence in his defense. The trial court deemed the case submitted for decision insofar as he was concerned. Cabador filed a motion for reconsideration of this Order but the RTC denied it on February 19, 2007.^[8] Cabador questioned the RTC's actions before the CA but on August 4, 2008 the latter denied his petition and

affirmed the lower court's actions.^[9] With the CA's denial of his motion for reconsideration, on October 28, 2008 petitioner came to this Court *via* a petition for review on *certiorari*.

The issue in this case is whether or not petitioner Cabador's motion to dismiss before the trial court was in fact a demurrer to evidence filed without leave of court, with the result that he effectively waived his right to present evidence in his defense and submitted the case for decision insofar as he was concerned.

The trial proper in a criminal case usually has two stages: first, the prosecution's presentation of evidence against the accused and, second, the accused's presentation of evidence in his defense. If, after the prosecution has presented its evidence, the same appears insufficient to support a conviction, the trial court may at its own initiative or on motion of the accused dispense with the second stage and dismiss the criminal action.^[10] There is no point for the trial court to hear the evidence of the accused in such a case since the prosecution bears the burden of proving his guilt beyond reasonable doubt. The order of dismissal amounts to an acquittal.

But because some have in the past used the demurrer in order to delay the proceedings in the case, the remedy now carries a caveat. When the accused files a demurrer *without leave of court*, he shall be deemed to have waived the right to present evidence and the case shall be considered submitted for judgment.^[11] On occasions, this presents a problem such as when, like the situation in this case, the accused files a motion to dismiss that, to the RTC, had the appearance of a demurrer to evidence. Cabador insists that it is not one but the CA, like the lower court, ruled that it is.

This Court held in *Enojas, Jr. v. Commission on Elections*^[12] that, to determine whether the pleading filed is a demurrer to evidence or a motion to dismiss, the Court must consider (1) the allegations in it made in good faith; (2) the stage of the proceeding at which it is filed; and (3) the primary objective of the party filing it.

Here, the pertinent portions of petitioner Cabador's motion to dismiss read as follows:

2. On November 9, 2001, the accused was arrested and subsequently brought to the Quezon City jail through a commitment order dated November 21, 2001 where he had been detained during the course of this case.
3. The accused was arraigned on January 8, 2002 and trial began soon after.
4. UP-OLA entered its appearance as counsel for the accused on January 20, 2005.
5. On February 10, 2006, the Honorable Court terminated the presentation of evidence for the prosecution considering that the case has been going on for 5 years already and during that period

the prosecution has only presented 5 witnesses. Moreover, xxx there had been numerous postponements due to failure of the prosecution to ensure the presence of its witnesses.

6. In an order dated March 31, 2006, the Honorable court required the public prosecutor to submit its formal offer of evidence within fifteen (15) days from receipt of such order.
7. On April 17, 2006, the public prosecutor was again absent so the presentation of evidence for the accused was reset to June 6, 2006.
8. During the same hearing, the Prosecution was again granted an additional fifteen (15) days within which to file their formal offer of evidence.
9. On June 6, 2006, the public prosecutor again failed to appear and to file their formal offer of evidence. In an order, the Honorable Court again extended to the prosecution an additional fifteen (15) days from receipt of the order within which to file their formal offer of evidence.
10. On June 28, 2006, the Honorable Court issued an order granting the prosecution a thirty-day extension, or until July 28, 2006 within which to file their formal offer of evidence since the public prosecutor was on leave.
11. Upon the expiration of the extension granted by the Honorable Court, the prosecution failed to file their formal offer of evidence.
10. (Sic) Despite three (3) extensions, the prosecution failed to file formal offer of evidence.
11. (Sic) Sec. 34, Rule 132 of the Rules of Court provides that "the court shall consider no evidence which has not been formally offered." A formal offer is necessary, since judges are required to base their findings of fact and their judgment solely and strictly upon the evidence offered by the parties at the trial (Ong vs. CA, GR No. 117103). Hence, without any formal offer of evidence, this Honorable Court has no evidence to consider.
12. The charge against the accused has no leg to stand on. The witnesses that had been presented by the prosecution testified mainly on the occurrences on the night of the incident and had no knowledge of any connection with or any participation by the accused in the incident.
13. The hearings of the case have been delayed since 2001 through no fault of the defense to the prejudice of the rights of the accused to a speedy trial, mandated by no less than Art. III, Sec. 16 of the Constitution.
14. Since UP-OLA had entered its appearance in 2005, the case had been reset for twelve (12) times, most of which are due to the fault or absence