

## SECOND DIVISION

[ G.R. No. 167526, July 26, 2010 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DANTE TAN,  
RESPONDENT.**

### **D E C I S I O N**

**PERALTA, J.:**

Before this Court is a petition for review on *certiorari*,<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the June 14, 2004 Resolution<sup>[2]</sup> and February 24, 2005 Resolution<sup>[3]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 83433.

The facts of the case are as follows:

On December 21, 2000, two Informations for violation of Rule 36 (a)-1,<sup>[4]</sup> in relation to Sections 32 (a)-1<sup>[5]</sup> and 56<sup>[6]</sup> of the Revised Securities Act, were filed by petitioner People of the Philippines against respondent Dante Tan in the Regional Trial Court (RTC) of Pasig City, Branch 153. They were docketed as Criminal Cases Nos. 119831 and 119832.

The Information<sup>[7]</sup> in Criminal Case No. 119831 reads:

That on December 10, 1998, or thereabout, in the City of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the beneficial owner of 84,030,000 Best World Resources Corporation shares, a registered security sold pursuant to Sections 4 and 8 of the Revised Securities Act, which beneficial ownership constitutes 18.6% of the outstanding shares of the company, way above the 10% required by law to be reported, and covered by Certificate Nos. DT-UK 55485704 and DT-UR 55485776, did then and there willfully, unlawfully and criminally fail to file with the Securities and Exchange Commission and with the Philippine Stock Exchange a sworn statement of the amount of all BWRC shares of which he is the beneficial owner, within ten (10) days after he became such beneficial owner, in violation of the Revised Securities Act and/or the rules and regulations prescribed and pursuant thereto.

CONTRARY TO LAW.<sup>[8]</sup>

The Information<sup>[9]</sup> in Criminal Case No. 119832 reads:

That on June 18, 1999, or thereabout, in the City of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the beneficial owner of 75,000,000 Best World Resources Corporation shares, a registered security which has been sold pursuant to Sections 4 and 8 of the Revised Securities Act, which beneficial ownership constitutes 18.6% of the outstanding shares of the company, way above the 10% required by law to be reported, did then and there willfully, unlawfully and criminally fail to file with the Securities and Exchange Commission and with the Philippine Stock Exchange a sworn statement of the amount of all BWRC shares of which he is the beneficial owner, within ten (10) days after he became such beneficial owner, in violation of the Revised Securities Act and/or the rules and regulations prescribed pursuant thereto.

CONTRARY TO LAW.<sup>[10]</sup>

After arraignment, respondent pleaded not guilty<sup>[11]</sup> to both charges and the trial ensued.

On November 24, 2003, petitioner made its formal offer of evidence,<sup>[12]</sup> consisting of Exhibits "A" to "E" with sub-exhibits, Exhibits "K-1," "K-10" and "K-11," "Q," "R," "S," "T" and "W" with sub-exhibits, and Exhibit "X."

On December 11, 2003, the RTC issued an Order<sup>[13]</sup> admitting Exhibits "A," "B," "W" and "X," but denied admission of all the other exhibits on the grounds stated therein.

Aggrieved, petitioner filed a Motion for Reconsideration, but it was denied by the RTC in an Order<sup>[14]</sup> dated January 27, 2004.

In the meantime, on December 18, 2003, respondent filed an Omnibus Motion for Leave to File Demurrer to Evidence<sup>[15]</sup> and to admit the attached Demurrer to Evidence.

On January 29, 2004, the RTC issued another Order<sup>[16]</sup> granting respondents' Motion for Leave to File the Demurrer and forthwith admitted respondent's attached Demurrer. The RTC also ordered petitioner to file an opposition.

On February 18, 2004, petitioner filed its Opposition<sup>[17]</sup> to the Demurrer to Evidence. Respondent then filed a Reply.<sup>[18]</sup>

On March 16, 2004, the RTC issued an Order<sup>[19]</sup> granting respondent's Demurrer to Evidence, the dispositive portion of which reads:

WHEREFORE, finding the Demurrer to Evidence filed by accused Dante Tan to be meritorious, the same is GRANTED.

SO ORDERED.<sup>[20]</sup>

On April 12, 2004,<sup>[21]</sup> petitioner filed a Petition for *Certiorari*<sup>[22]</sup> before the CA assailing the December 11, 2003, January 27, 2004, and March 16, 2004 Orders of the RTC.

On June 14, 2004, the CA issued a Resolution denying the petition, the dispositive portion of which reads:

WHEREFORE, in the context of all the foregoing considerations, it would be futile to take further action on the herein petition, which is therefore DISMISSED outright for evident want of merit.

SO ORDERED.<sup>[23]</sup>

In denying the petition, the CA ruled that the dismissal of a criminal action by the grant of a Demurrer to Evidence is one on the merits and operates as an acquittal, for which reason, the prosecution cannot appeal therefrom as it would place the accused in double jeopardy.<sup>[24]</sup>

Aggrieved, petitioner filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution dated February 24, 2005.

Hence, herein petition, with petitioner raising the lone assignment of error, to wit:

**RESPONDENT COURT GRAVELY ERRED IN PRECLUDING THE PEOPLE FROM PROSECUTING ITS CASES AGAINST DANTE TAN.**<sup>[25]</sup>

The petition has no merit.

Notwithstanding the RTC's grant of respondent's Demurrer to Evidence, petitioner contends that the CA erred in applying the rules on double jeopardy. Specifically, petitioner argues that double jeopardy does not apply in cases decided by the trial court without jurisdiction and in violations of petitioner's right to due process.<sup>[26]</sup>

In *People v. Sandiganbayan*,<sup>[27]</sup> this Court explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused*." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.<sup>[28]</sup>

The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent.<sup>[29]</sup>

These elements are present here: (1) the Informations filed in Criminal Cases Nos. 119831 and 119832 against respondent were sufficient in form and substance to sustain a conviction; (2) the RTC had jurisdiction over Criminal Cases Nos. 119831 and 119832; (3) respondent was arraigned and entered a plea of not guilty; and (4) the RTC dismissed Criminal Cases Nos. 119831 and 119832 on a demurrer to evidence on the ground of insufficiency of evidence which amounts to an acquittal from which no appeal can be had.

The rule on double jeopardy, however, is not without exceptions. In *People v. Laguio, Jr.*,<sup>[30]</sup> this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:

**x x x The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham.** However, while certiorari may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.<sup>[31]</sup>

After an extensive review of previous Court decisions relevant to herein petition, this Court finds that the abovementioned exception is inapplicable to the factual milieu herein. This Court finds that the RTC did not abuse its discretion in the manner it conducted the proceedings of the trial, as well as its grant of respondent's demurrer to evidence.

Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.<sup>[32]</sup>

In *Galman v. Sandiganbayan*,<sup>[33]</sup> this Court ruled that the prosecution was denied due process of law when the trial was but a mock trial, to wit:

More so does the rule against the invoking of double jeopardy hold in the cases at bar where as we have held, the sham trial was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire

proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused.<sup>[34]</sup>

In addition, in *People v. Bocar*,<sup>[35]</sup> this Court ruled that there is no double jeopardy when the prosecution was not allowed to complete its presentation of evidence by the trial court, to wit:

It is evident from the brief transcript of the proceedings held on July 7, 1967 that the parties were not placed under oath before they answered the queries of the respondent Judge (pp. 11-17, rec.). Verily, no evidence in law had as yet been entered into the records of the case before respondent Court. Respondent Court's issuance of the questioned dismissal order was arbitrary, whimsical and capricious, a veritable abuse of discretion which this Court cannot permit.

Moreover, it is clear from the same transcript that the prosecution never had a chance to introduce and offer its evidence formally in accordance with the Rules of Court (pp. 11-17, rec.). Verily, the prosecution was denied due process.

Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated. x x x<sup>[36]</sup>

Likewise, in *People v. Judge Albano*,<sup>[37]</sup> this Court held that there is no double jeopardy when the trial court preemptively dismissed the case, thus:

The trial court exceeded its jurisdiction when it practically held that the prosecution failed to establish the culpability of the accused in a proceeding which does not even require the prosecution to do so. It acted with grave abuse of discretion, tantamount to lack of jurisdiction, when it preemptively dismissed the cases and, as a consequence thereof, deprived the prosecution of its right to prosecute and prove its case, thereby violating its fundamental right to due process." With this violation, its Orders, dated 28 October 1976 and 20 December 1976, are therefore null and void. Likewise, for being null and void, said orders cannot constitute a proper basis for a claim of double jeopardy.<sup>[38]</sup>

In *Saldana v. Court of Appeals*,<sup>[39]</sup> this Court ruled that the prosecution's right to due process is violated when the trial court aborted its right to complete its presentation of evidence, thus:

The order of the Court of Appeals reinstating the criminal case for further hearing by the trial court does not violate the rule on double jeopardy. One of the elements of double jeopardy is a competent court. The trial court in this case was ousted from its jurisdiction when it violated the right of the prosecution to due process by aborting its right to complete