

## SECOND DIVISION

[ G.R. No. 173089, August 25, 2010 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ENRIQUE C. ASIS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF BILIRAN PROVINCE, BRANCH 16, AND JAIME ABORDO, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review on *certiorari* under Rule 45 filed by the Office of the Solicitor General (*OSG*), representing the State, seeking to reverse and set aside the June 7, 2006 *Resolution*<sup>[1]</sup> of the Court of Appeals (*CA*), in CA-G.R. SP No. 01289, which dismissed outright its petition for *certiorari* under Rule 65 for being the wrong remedy.

From the records, it appears that on October 7, 2002, at 12:30 o'clock in the morning, respondent Jaime Abordo (*Abordo*) was riding his motorcycle on his way home. He was met by private complainants Kennard Majait (*Majait*), Joeniel Calvez (*Calvez*) and Jose Montes (*Montes*). An altercation ensued between them. Abordo shot Majait in the leg while Calvez was hit in the lower left side of his abdomen. Montes escaped unhurt.

Abordo was charged with two (2) counts of attempted murder in Criminal Case Nos. N-2212 and N-2213 and one (1) count of frustrated murder in Criminal Case No. N-2211 before the Regional Trial Court, Biliran Province, Branch 16 (*RTC*). The trial court found no treachery and evident premeditation. Thus, in its August 29, 2005 Decision,<sup>[2]</sup> the RTC held Abordo liable only for Serious Physical Injuries for shooting Calvez and Less Serious Physical Injuries with regard to Majait. It also appreciated four (4) generic mitigating circumstances in favor of Abordo. With respect to the complaint of Montes, Abordo was acquitted.

All three complainants moved for a reconsideration regarding the civil aspect. They filed a supplemental motion to include moral damages. Calvez without the conformity of the Provincial Prosecutor, filed a notice of appeal for both the civil and the criminal aspects. For said reason, Calvez later sought withdrawal of his motion for reconsideration and its supplement.

On October 24, 2005, the trial court dismissed Majait's motion for reconsideration while Calvez's motion to withdraw was granted. On said date, the trial court also dismissed Calvez' appeal for not bearing the conformity of the Provincial Prosecutor.

Acting on Chief State Prosecutor Jovencito R. Zuno's Indorsement<sup>[3]</sup> of the October 11, 2005 letter<sup>[4]</sup> of Assistant City Prosecutor Nida C. Tabuldan-Gravino, a relative of Calvez, the OSG filed a petition for *certiorari* under Rule 65 before the CA based

on the following grounds:

GROUNDS FOR THE ALLOWANCE  
OF THE PETITION  
(Petition for Certiorari before the CA)

I

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT HAD NO INTENT TO KILL, IN HOLDING HIM GUILTY OF ONLY SERIOUS PHYSICAL INJURIES AND LESS SERIOUS PHYSICAL INJURIES INSTEAD OF FRUSTRATED MURDER AND ATTEMPTED MURDER IN CRIMINAL CASE NOS. N-2211 AND N-2212, RESPECTIVELY, AND IN ACQUITTING HIM OF THE CRIME CHARGED IN CRIMINAL CASE NO. N-2213.

II

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN APPRECIATING FOUR (4) MITIGATING CIRCUMSTANCES IN FAVOR OF PRIVATE RESPONDENT.<sup>[5]</sup>

The CA, in the assailed Resolution, dismissed the petition outright. According to the appellate court, the filing of the petition for *certiorari* was the wrong remedy. As the State was questioning the verdict of acquittal and findings of lesser offenses by the trial court, the remedy should have been an appeal. Moreover, the petition for *certiorari* placed the accused in double jeopardy. Specifically, the CA wrote:

x x x. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction but an error of law or fact - a mistake of judgment - appeal is the remedy. In view of the improper action taken by the herein petitioner, the instant petition should be dismissed.

Moreover, Section 1, Rule 122 of the 2000 Rules of Criminal Procedure provides that any party may appeal from a judgment or final order unless the accused will be placed in double jeopardy. In the instant petition, the Solicitor General, representing the People of the Philippines is assailing the judgment of the public respondent in finding the accused guilty of lesser crimes than the ones with which he was charged and of acquitting him in another. It appears to us that the Solicitor General is also representing the interest of the private complainant Calvez when it questioned the dismissal of the latter's Notice of Appeal dated October 10, 2005 with respect to the civil aspect of the case. Although the Solicitor General is allowed to file an appeal under such rule; however, we must point out that **in filing this petition for certiorari, the**

**accused is thereby placed in double jeopardy.** Such **recourse is tantamount to converting the petition for certiorari into an appeal,** contrary to the express injunction of the Constitution, the Rules of Court and prevailing jurisprudence on double jeopardy.

We must emphasize that the prosecution cannot appeal a decision in a criminal case whether to reverse an acquittal or to increase the penalty imposed in a conviction because it would place him in double jeopardy. Hence, **this petition is dismissible not only on the ground of wrong remedy taken by the petitioner to question an error of judgment but also on the ground that such action places the accused in double jeopardy.**<sup>[6]</sup> [emphases and underscoring supplied]

Not in conformity, the OSG comes to this Court via this petition for review under Rule 45 presenting the following:

## **GROUND S RELIED UPON FOR THE ALLOWANCE OF THE PETITION**

### **I**

**THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING OUTRIGHT THE PETITION FOR CERTIORARI SEEKING TO ANNUL THE JOINT JUDGMENT DATED AUGUST 29, 2005 OF HON. ENRIQUE C. ASIS, IN HIS CAPACITY AS PRESIDING JUDGE OF THE RTC OF BILIRAN, BRANCH 16 IN CRIM. CASE NOS. N-2211, N-2212 AND N-2213 WHICH WAS CLEARLY SHOWN TO BE CONTRARY TO THE EVIDENCE PRESENTED AND APPLICABLE LAW AND JURISPRUDENCE.**

### **II**

**THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN THEREBY AFFIRMING *IN TOTO* THE PLAINLY ERRONEOUS JUDGMENT DATED AUGUST 29, 2005 OF HON. ENRIQUE C. ASIS, AS PRESIDING JUDGE OF THE RTC OF BILIRAN PROVINCE, BRANCH 16, IN CRIM. CASE NOS. N-2211, N-2212 AND N-2213.**<sup>[7]</sup>

On January 19, 2009, the petition was given due course and the parties were ordered to submit their respective memoranda. The parties complied with the order.

We find that the appellate court erred in dismissing the petition outright.

A petition for certiorari under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of