

## THIRD DIVISION

[ G.R. No. 180761, August 09, 2010 ]

**ROMAN GARCES, PETITIONER, VS. SIMPLICIO HERNANDEZ, JR.,  
CANDIDO HERNANDEZ, ROSITA HERNANDEZ, AND JEFFREY  
MANGUBAT,\* RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

The present petition for review on certiorari bears, in the main, on the issue of whether respondents who were charged with but acquitted of murder are civilly liable to the heirs of Rustico Garces (the victim).

In its November 10, 2004 Decision<sup>[1]</sup> acquitting respondent of murder, Branch 4 of the Regional Trial Court (RTC) of Batangas City discoursed.

It is stated that the guilt of an accused rests solely on the strength of the Prosecution's evidence and does not depend on the weakness of the evidence of the Defense. Moreover, such guilt must be proven beyond a reasonable doubt.

In the case at bar, there is clearly **no moral certainty that can be arrived at** by the Court in convicting the accused. Physical and testimonial evidence presented by the Prosecution have failed to elicit in the mind of the Court the conclusion that the herein accused should and must be held criminally liable for the heinous death of Rustico Garces. As a matter of fact, **the physical evidence in his case instead of strengthening only weakened its case.**

Moreover, it is noted that not one of the accused went into hiding even though they have acquired knowledge about the death of Rustico. Instead, Simplicio Sr., Candido and Simplicio Hernandez Jr. voluntarily went with the police investigators on the night of August 13, 2000. As the oft repeated dictum states ["the guilty fleeth while the innocent is as brave as a lion". And, with respect to accused Rosita Hernandez, she appears to have been arrested in Cuta, Batangas City. She must have been visiting her husband and children at the Provincial Jail of Batangas located in Cuta, Batangas City on March 5, 2000 when it happened. These actuations of the accused eloquently **speak of their innocence in the face of unreliable evidence presented by the Prosecution.**<sup>[2]</sup> (emphasis and underscoring supplied)

After the promulgation of judgment, Atty. Florentino H. Garces entered his

appearance as counsel for the father of the victim, Roman Garces (petitioner), and filed a Motion for Reconsideration of the trial court's decision respecting respondents' civil liability.<sup>[3]</sup> The trial court dismissed the motion in this wise:

Acting on the motion for reconsideration dated December 9, 2004 filed by Atty. Florentino H. Garces, it is to be stated at the very outset that said Counsel appears to have no legal personality to file the motion. The records do not show that he was Counsel of record for the Private Prosecution and neither [was] the motion signed by the [Provincial] Prosecutor.

As regards the manifestation on the right of the private Prosecution to claim civil damages where the acquittal of the accused was based on grounds of reasonable doubt, suffice it to state that while such right subsists in favor of the Private Prosecution, the matter should be properly prosecuted in an appropriate separate civil action and not in the same criminal case which gave rise to such right.<sup>[4]</sup> (underscoring supplied)

Petitioner's Supplemental Motion for Reconsideration<sup>[5]</sup> was dismissed by the trial court for being moot and academic.<sup>[6]</sup>

Petitioner assailed the trial court's denial of his motions via Certiorari<sup>[7]</sup> before the Court of Appeals which dismissed it for lack of merit,<sup>[8]</sup> viz:

x x x [P]etitioner argues that the fact that the prosecutor did not sign the motion for reconsideration is of no moment since what is sought to be reconsidered involves only the civil liability of private respondents. We agree.

x x x x

The foregoing notwithstanding, We cannot entertain the petition.

It is settled that a judgment of acquittal is immediately final and executory and the prosecution cannot appeal the acquittal because of the constitutional prohibition against double jeopardy. Nonetheless, insofar as the civil aspect of the case is concerned, the offended party, despite a judgment of acquittal, is afforded the remedy of appeal.

In the present case, there is no dispute that the judgment of the trial court acquitting private respondents is already final. What petitioner is assailing is the failure of public respondent to rule on the civil liability of private respondents. However, while an appeal appears to have been open and available, petitioner, without any justifiable reason, did not resort to this remedy. This is a fatal procedural lapse. Section 1, Rule 65 of the Rules of Civil Procedure is plain and unambiguous in providing that the remedy of certiorari may be availed of only when "**there is no appeal, nor any plain, speedy, and adequate remedy in the**

***ordinary course of law.***"<sup>[9]</sup>(emphasis and italics in the original; underscoring supplied)

At all events, the appellate court held that, even on the merits, petitioner's certiorari would not lie on the following ratiocination:

x x x x

While **physical** evidence was submitted, primarily a gun, empty bullet shells recovered near the body of Rustico, the slug recovered from the body of Rustico, the traces of blood and the strands of hair recovered at the house of private respondents - these failed to point to private respondents as the perpetrators of the killing. The gun recovered was never established to have belonged to any of the private respondents. Furthermore, the ballistics examination failed to confirm that the slug recovered from the body of Rustico came from the same gun. As for the traces of blood and strands of hair, these were never established to have come from Rustico.

As for the **testimonial evidence**, We find no reason to disagree with the finding of public respondent giving no credence to the testimonies of Miguel Jovello and Jefferson Garcia. Both Jovello and Garcia testified that they saw Simplicio, Jr. and Candido at around eleven o'clock (11:00) in the morning of August 13, 2000 traversing the barangay road while carrying the dead body of Rustico with Simplicio, Sr. and Rosita walking with them. Indeed, as observed by public respondent, if such fact actually happened, there should have been many witnesses who could have testified to this event. Besides, settled is the rule that to be credible, testimonial evidence should not only come from the mouth of a credible witness but should also be credible. In this case, the said testimonies are inconsistent with human nature. It is unbelievable that private respondents would kill Rustico and then expose themselves to prosecution by parading the evidence of their crime in public and in broad daylight. While petitioner claims that "the events transpired in an insulated place within a desolate town", no evidence was offered to prove such claim.<sup>[10]</sup> (emphasis and underscoring supplied)

Thus, petitioner filed the present petition<sup>[11]</sup> which contends that

## I

**CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE PETITION FOR CERTIORARI WAS THE PROPER REMEDY AVAILED OF BY PETITIONER GARCES IN ASSAILING THE ACTS OF PUBLIC RESPONDENT JUDGE ANTONA WHICH WERE COMMITTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.**