

THIRD DIVISION

[G.R. No. 172832, April 06, 2009]

**ROSARIO T. DE VERA, PETITIONER, VS. GEREN A. DE VERA,
RESPONDENT.**

D E C I S I O N

NACHURA, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to reverse the February 28, 2006 Decision^[1] of the Court of Appeals (CA) and its May 24, 2006 Resolution^[2] in CA-G.R. SP No. 91916.

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

Petitioner Rosario T. de Vera accused her spouse Geren A. de Vera (Geren) and Josephine F. Juliano (Josephine) of Bigamy. They were thus indicted in an Information, the accusatory portion of which reads:

That on or about the 31st day of July, 2003, in the Municipality of San Juan, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the said accused Geren A. De Vera being previously united in lawful marriage with Rosario Carvajal Tobias-De Vera, and without said marriage having been legally dissolved, did, then and there willfully, unlawfully and feloniously contract a second marriage with accused Josephine Juliano y Francisco, who likewise has previous knowledge that accused Geren A. De Vera's previous marriage with Rosario T. De Vera is still valid and subsisting, said second marriage having all the essential requisites for its validity.

CONTRARY TO LAW.^[3]

Upon arraignment, Geren pleaded "Guilty." However, in a Motion^[4] dated April 8, 2005, he prayed that he be allowed to withdraw his plea in the meantime in order to prove the mitigating circumstance of voluntary surrender. The motion was opposed^[5] by petitioner on the ground that not all the elements of the mitigating circumstance of "voluntary surrender" were present. She added that "voluntary surrender" was raised only as an afterthought, as Geren had earlier invoked a "voluntary plea of guilty" without raising the former. Finally, she posited that since the case was ready for promulgation, Geren's motion should no longer be entertained.

In an Order^[6] dated June 6, 2005, the Regional Trial Court (RTC) granted Geren's motion and appreciated the mitigating circumstance of voluntary surrender in the

determination of the penalty to be imposed. Thus, on even date, the RTC promulgated Geren's Sentence,^[7] the dispositive portion of which reads:

WHEREFORE, the court finds accused Geren A. de Vera guilty beyond reasonable doubt of the crime of bigamy as charged in the Information and there being two (2) mitigating circumstances (Plea of guilty and voluntary surrender), and no aggravating circumstance and applying the provision of Article 349 in relation to paragraph 5, Article 64, Revised Penal Code, as amended, and the Indeterminate Sentence Law, accused is hereby sentenced to suffer the penalty of 6 MONTHS of ARRESTO MAYOR, as minimum to FOUR (4) YEARS, TWO (2) MONTHS of PRISION CORRECCIONAL, as maximum.

No pronouncement as to cost.

SO ORDERED.

Unsatisfied, petitioner moved for the partial reconsideration^[8] of the decision but the same was denied in an Order^[9] dated August 25, 2005.

In the meantime, on June 8, 2005, Geren applied for probation^[10] which was favorably acted upon by the RTC by referring it to the Probation Officer of San Juan, Metro Manila.^[11]

For failure to obtain favorable action from the RTC, petitioner instituted a special civil action for *certiorari* before the CA. However, she failed to persuade the CA which rendered the assailed decision affirming the RTC Order and Sentence, and the assailed resolution denying her motion for reconsideration. In sustaining the appreciation of the mitigating circumstance of voluntary surrender, the CA maintained that all its requisites were present.

Hence, the instant petition based on the following grounds:

THE HONORABLE COURT OF APPEALS HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW AND WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT WHEN:

- A. IT ERRONEOUSLY FAILED TO APPLY THE RULING IN PEOPLE VS. CAGAS REGARDING THE REQUISITES OF VOLUNTARY SURRENDER TO BE APPRECIATED IN THE INSTANT CASE.
- B. IT INCORRECTLY AFFIRMED THE ORDER AND SENTENCE BOTH DATED JUNE 6, 2005 AND THE ORDER DATED AUGUST 25, 2005 RENDERED BY THE PUBLIC RESPONDENT IN APPRECIATING THE MITIGATING CIRCUMSTANCES OF PLEA OF GUILTY AND VOLUNTARY SURRENDER IN FAVOR OF THE PRIVATE RESPONDENT IN CRIMINAL CASE NO. 130139, AN ACT THAT WARRANTS THIS HONORABLE COURT TO EXERCISE ITS APPELLATE JUDICIAL DISCRETION.^[12]

The petition lacks merit.

While we are called upon to resolve the sole issue of *whether the CA correctly denied the issuance of the writ of certiorari*, we cannot ignore the procedural issues which the trial and appellate courts failed to appreciate.

In filing her motion for reconsideration before the RTC and her petition for *certiorari* before the CA, petitioner sought the modification of the court's judgment of conviction against Geren, because of the allegedly mistaken application of the mitigating circumstance of "voluntary surrender." The eventual relief prayed for is the increase in the penalty imposed on Geren. Is this action of petitioner procedurally tenable?

Section 7, Rule 120 of the Revised Rules of Criminal Procedure provides:

Sec. 7. *Modification of judgment.* - A judgment of conviction may, upon motion of the accused, be modified or set aside before it becomes final or before appeal is perfected. Except where the death penalty is imposed, a judgment becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or when the accused has waived in writing his right to appeal, or has applied for probation.

Simply stated, in judgments of conviction, errors in the decision cannot be corrected unless the accused consents thereto; or he, himself, moves for reconsideration of, or appeals from, the decision.^[13]

Records show that after the promulgation of the judgment convicting Geren of bigamy, it was petitioner (as private complainant) who moved for the reconsideration^[14] of the RTC decision. This was timely opposed by Geren, invoking his right against double jeopardy.^[15] Although the trial court correctly denied the motion for lack of merit, we would like to add that the same should have been likewise denied pursuant to the above-quoted provision of the Rules.

As explained in *People v. Viernes*,^[16] the rule on the modification of judgments of conviction had undergone significant changes before and after the 1964 and 1985 amendments to the Rules. Prior to the 1964 Rules of Court, we held in various cases^[17] that the prosecution (or private complainant) cannot move to increase the penalty imposed in a promulgated judgment, for to do so would place the accused in double jeopardy. The 1964 amendment, however, allowed the prosecutor to move for the modification or the setting aside of the judgment before it became final or an appeal was perfected. In 1985, the Rules was amended to include the phrase "upon motion of the accused," effectively resurrecting our earlier ruling prohibiting the prosecution from seeking a modification of a judgment of conviction. Significantly, the present Rules retained the phrase "upon motion of the accused." Obviously, the requisite consent of the accused is intended to protect him from having to defend himself anew from more serious offenses or penalties which the prosecution or the court may have overlooked.^[18]

Equally important is this Court's pronouncement in *People v. Court of Appeals*^[19] on the propriety of a special civil action for *certiorari* assailing a judgment of conviction. In that case, the trial court convicted the accused of homicide. The accused thereafter appealed his conviction to the CA which affirmed the judgment of the trial