

## FIRST DIVISION

[ G.R. No. 160610, August 14, 2009 ]

**JUDELIO COBARRUBIAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, THE HONORABLE COURT OF APPEALS SPECIAL FORMER SECOND DIVISION, AND HON. BONIFACIO SANZ MACEDA, ACTING JUDGE OF THE REGIONAL TRIAL COURT OF LAS PIÑAS CITY, BRANCH 255, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the Resolutions dated 10 March 2003 and 9 October 2003 of the Court of Appeals in CA-G.R. SP No. 72315.

#### The Facts

In 1994, petitioner Judelio Cobarrubias was charged with Frustrated Homicide (Criminal Case No. 94-5036), Homicide (Criminal Case No. 94-5038), Violation of Section 261(Q) of the Omnibus Election Code in relation to Section 32 of Republic Act No. 7166 (Criminal Case No. 24-392), and Illegal Possession of Firearms under Presidential Decree No. 1866 (Criminal Case No. 94-5037). Petitioner pleaded not guilty to all the charges and trial followed.

On 20 March 2001, Presiding Judge Florentino M. Alumbres of the Regional Trial Court of Las Piñas City, Branch 255 (trial court), issued an Order,<sup>[2]</sup> the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, the Court rules that the prosecution failed to establish the guilt of the accused beyond reasonable doubt in Criminal Cases Nos. 94-5036 and 94-5037, and these cases are ordered DISMISSED.

Criminal Cases Nos. 94-5038 and 24392 should be set for further trial.

SO ORDERED.<sup>[3]</sup>

The prosecution did not appeal the trial court's Order. On 5 July 2001, petitioner filed with the trial court a Motion for Correction of Clerical Error,<sup>[4]</sup> alleging that in the dispositive portion of the Order, Criminal Case No. 94-5038 should have been dismissed instead of Criminal Case No. 94-5037, which should have been the case set for further trial. Petitioner maintained that there was a typographical error in the

dispositive portion considering that in the body of the Order, the trial court ruled that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in the charges for Homicide and Frustrated Homicide.

On 26 February 2002, respondent Acting Judge Bonifacio Sanz Maceda<sup>[5]</sup> denied the motion, holding that the alleged error was substantial in nature which affected the very merit of the case. Petitioner moved for reconsideration, which respondent Judge denied on 23 July 2002.

On 21 August 2002, petitioner filed with the Court of Appeals a Petition for Certiorari and Prohibition with Prayer for a Temporary Restraining Order or Writ of Preliminary Injunction. Petitioner sought to set aside the Orders dated 26 February 2002 and 23 July 2002 of respondent Judge.

On 23 August 2002, the Court of Appeals dismissed the petition for failure to submit with the petition a clear duplicate original or a certified true copy of the assailed Order dated 23 July 2002, and for failure of petitioner's counsel to indicate his current official receipt number and date of payment of the current Integrated Bar of the Philippines membership dues, pursuant to SC Bar Matter No. 287.<sup>[6]</sup>

Petitioner moved for reconsideration, which the Court of Appeals granted. In a Resolution dated 11 December 2002, the Court of Appeals directed petitioner to implead the People of the Philippines as respondent. On 10 March 2003, the Court of Appeals dismissed the petition for failure of petitioner to comply with the resolution.<sup>[7]</sup> On 19 March 2003, petitioner filed an Omnibus Motion for Reconsideration and Motion to Admit Amended Petition, which the Court of Appeals dismissed. Hence, this petition.

### **The Issues**

Petitioner contends that:

1. THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN DISMISSING THE PETITION ON THE GROUND OF A TECHNICALITY, DESPITE THE PETITIONER'S COMPLIANCE WITH ITS RESOLUTION DATED 11 DECEMBER 2002.
2. THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN NOT GIVING DUE COURSE TO THE PETITION CONSIDERING THE MERITS THEREOF AND THE SUBSTANTIVE RIGHTS OF THE PETITIONER.<sup>[8]</sup>

### **The Ruling of the Court**

We find the petition meritorious.

#### ***Compliance with the Formal Requirements***

The Court of Appeals dismissed the petition for failure of petitioner to comply with

the resolution directing him to implead the People of the Philippines as respondent . The Court of Appeals held that the petition was prosecuted manifestly for delay, which is a ground for dismissal under Section 8, Rule 65 of the Rules of Court.<sup>[9]</sup>

However, Section 6, Rule 1 of the Rules of Court also provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Thus, in several cases, the Court has ruled against the dismissal of petitions or appeals based solely on technicalities especially when there was subsequent substantial compliance with the formal requirements.<sup>[10]</sup>

In this case, the Court finds the petitioner's failure to implead the People of the Philippines as respondent not so grave as to warrant dismissal of the petition. After all, petitioner rectified his error by moving for reconsideration and filing an Amended Petition, impleading the People of the Philippines as respondent.

In *Vda. de Manguerra v. Risos*,<sup>[11]</sup> where the petition for certiorari filed with the Court of Appeals failed to implead the People of the Philippines as an indispensable party, the Court held:

It is undisputed that in their petition for *certiorari* before the CA, respondents failed to implead the People of the Philippines as a party thereto. Because of this, the petition was obviously defective. As provided in Section 5, Rule 110 of the Revised Rules of Criminal Procedure, all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, it behooved the petitioners (respondents herein) to implead the People of the Philippines as respondent in the CA case to enable the Solicitor General to comment on the petition.

**However, this Court has repeatedly declared that the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for petitioner's/plaintiff's failure to comply.**

<sup>[12]</sup> (Emphasis supplied)

In this case, the Court of Appeals should have granted petitioner's motion for reconsideration and given due course to the petition in view of petitioner's subsequent compliance by filing an Amended Petition, impleading the People of the Philippines as respondent. Technicalities may be set aside when the strict and rigid application of the rules will frustrate rather than promote justice.<sup>[13]</sup>

### ***Conflict Between the Fallo and the Body of the Order***

Instead of remanding the case to the Court of Appeals, the Court will resolve the issue raised by petitioner in order to prevent further delay in the resolution of the case.

Petitioner's main contention is that there is a clerical error in the fallo or the dispositive portion of Judge Alumbres' Order dated 20 March 2001, which should have dismissed Criminal Case No. 94-5038 instead of Criminal Case No. 94-5037, considering that in the body of the order, the trial court ruled that the prosecution failed to prove beyond reasonable doubt the guilt of petitioner in the charges for Frustrated Homicide (Criminal Case No. 94-5036) and Homicide (Criminal Case No. 94-5038). However, respondent Acting Judge Maceda, who was assigned to the trial court after Judge Alumbres retired, denied petitioner's motion for correction, holding that the alleged error was substantial in nature.

For a clearer understanding of the issue, the pertinent portions of the Order dated 20 March 2001 are hereunder quoted:

**On the first and second charges of Homicide (Criminal Case No. 94-5038) and Frustrated Homicide (Criminal Case No. 94-5036), did the prosecution prove the guilt of the accused beyond reasonable doubt in killing Edwin S. Martinez and the wounding of Decampong "without any just motive"?**

**To the mind of the Court, the prosecution failed in this regard.**

What is derogatory to the cases of the prosecution is the Resolution dated July 7, 1994 of the Department of Justice issued after a thorough preliminary investigation conducted by an investigating panel composed of State Prosecutor Philip I. Kimpo and Prosecution Attorney Emelie Fe M. delos Santos, duly approved by then Chief State Prosecutor Jovencito R. Zuño.

The pertinent portions of the said Resolution is quoted as follows:

x x x

x x x

"After hitting SI Martinez, respondent Cobarrubias, still seated, pointed his gun towards agent Decampong and an exchange of gun fire ensued leaving both of them wounded. Agent Decampong was hit on his right shoulder while respondent suffered wound on his "left thigh". (p. 4 - Resolution).

It is, therefore, very clear that it was Decampong who first fired at the accused from outside when he (accused) was seated inside his car. It is very difficult to believe the story of the prosecution that the exchange of

fire between the accused and the NBI agents happened while the accused was seated inside the car.

In fact, the Resolution of the Department of Justice attest to the fact that the accused was not the aggressor.

Pertinent portion of the Resolution (Exh. 2, 2-A & 2-B, 7/13/95 session) is quoted, thus:

"There is no treachery in the instant case as respondent was not the aggressor. Respondent did not attack the victim (Martinez) but only fired at the latter upon seeing him approaching his car with a gun in his hand, while announcing their being NBI agents and advising respondent and his companion not to move. Hence, it cannot be said that respondent employed means, methods or forms in the execution of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make (RPC, Art. 14, par. 16). In other words, for alevosia to apply, the killer must be the aggressor and he must deliberately and consciously adopt and employ a non-risky mode of execution that would insure the successful consummation of his criminal act. As ruled by the High Court, there is no treachery if the killing was committed at the moment (People vs. Gutierrez, 113 SCRA 155; People vs. de Castro, L-38989, Oct. 29, 1982, 117 SCRA 1014; People vs. Magaddatu, L-36446, Sept. 9, 1983, 124 SCRA 594; or if the attack cannot be sudden and unprovoked or unexpected (People v. Atienza, 115 SCRA 379 (1982); If no time was left for the accused to deliberate on the mode of attack or to prepare for the manner by which he could kill the deceased with the full assurance that it would be improbable or hard for the latter to defend himself or retaliate (People vs. De Jesus, L-58505, Nov. 19, 1982, 18 SCRA 516; Or the attack is unplanned (People vs. Manalang, L-471-36-37, July 28, 1983, 123 SCRA 583).

Neither is there evident premeditation in this case for the same reason that herein respondent was not the aggressor or attacker in the shooting incident or "encounter." Under the facts of the case, it is clear that respondent never planned in killing the victim.

Therefore, he could not have cling to a supposed determination as there was no determination at all to speak of."

(P. 8 & 9 -  
Resolution dated  
July 7, 1994, DOJ