

THIRD DIVISION

[G.R. NO. 159222, June 26, 2007]

**PEOPLE OF THE PHILIPPINES AND THE HON. BRICIO YGANA,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 153,
PASIG CITY, PETITIONERS, VS. RAFAEL BITANGA, RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

The Petition for Review on *Certiorari*^[1] before this Court assails the March 31, 2003 Decision^[2] and July 18, 2003 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 68797,^[4] which granted a Petition for Annulment of Judgment under Rule 47 of the February 29, 2000 Decision^[5] of the Regional Trial Court (RTC), Branch 153, Pasig City, in Criminal Case No. 103677.

The facts are not disputed.

On the basis of a complaint lodged by Traders Royal Bank (TRB),^[6] an information for estafa was filed against Rafael M. Bitanga (Bitanga) before the RTC and docketed as Criminal Case No. 103677. Bitanga pleaded "not guilty" to the offense charged. He was allowed to post bail.

During trial on the merits, the People presented the testimonies of three TRB employees on how Bitanga duped the bank into accepting three foreign checks for deposit and encashment, which were however returned to TRB by reason of "unlocated accounts."^[7]

When it was time for the defense to present his case, however, Bitanga and his counsel failed to appear and adduce evidence.^[8] Upon motion of the public prosecutor, a warrant of arrest was issued against respondent and his right to adduce evidence was deemed waived.^[9]

On February 29, 2000, the RTC promulgated *in absentia* a Decision finding Bitanga guilty as charged, thus:

WHEREFORE, judgment is hereby rendered convicting accused Rafael M. Bitanga of the crime of estafa defined and penalized under Article 315, par. 2 (a) of the Revised Penal Code and hereby sentences him to suffer imprisonment of four (4) years and two (2) months of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum with the necessary penalties provided by law and to indemnify private complainant Traders Royal Bank the amount of P742,884.00 and to pay the cost.

SO ORDERED.^[10]

On January 28, 2002, Bitanga filed with the CA a Petition for Annulment of Judgment with Prayer for Other Reliefs^[11] on the ground that extrinsic fraud was allegedly perpetuated upon him by his counsel of record, Atty. Benjamin Razon.^[12] He alleged that he received copy of the February 29, 2000 RTC Decision only on December 13, 2001.^[13]

The People filed an Answer^[14] opposing the Petition.

The CA granted the Petition for Annulment of Judgment in the March 31, 2003 Decision assailed herein, the decretal portion of which reads:

WHEREFORE, in the light of the foregoing considerations, the petition is hereby GRANTED. Accordingly, the decision of the Regional Trial Court in Muntinlupa City, Branch 153 being tainted with circumstances constitutive of extrinsic fraud which deprived the petitioner herein of his day in court is SET ASIDE. Resultantly, Criminal Case No. 103677 is remanded to the court of origin for further proceedings to give herein petitioner opportunity to present his evidence in said case and for the trial court to render judgment in accordance with the evidence adduced. Corollarily, the petitioner may be released and allowed to be on bail unless there are other valid and legal reasons for his continued detention.

SO ORDERED.^[15]

and denied the People's Motion for Reconsideration in its Resolution^[16] of July 18, 2003.

The foregoing CA Decision and Resolution are now being questioned by the People (petitioner) on these grounds:

I

The two previous counsels were not negligent in defending respondent.

II

Assuming without admitting the existence of negligence on the part of the previous counsels, the same does not constitute extrinsic fraud.

III

The Court of Appeals did not accord the previous counsels their right to procedural due process of law.

IV

Jumping bail, respondent waived his right to present his evidence.^[17]

The Petition for Review is meritorious.

Section 1, Rule 47 of the Rules of Court, limits the scope of the remedy of annulment of judgment to the following:

Section 1. *Coverage.*– This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in ***civil actions*** of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

The remedy cannot be resorted to when the RTC judgment being questioned was rendered in a criminal case. The 2000 Revised Rules of Criminal Procedure itself does not permit such recourse, for it excluded Rule 47 from the enumeration of the provisions of the 1997 Revised Rules of Civil Procedure which have suppletory application to criminal cases. Section 18, Rule 124 thereof, provides:

Sec. 18. *Application of certain rules in civil procedure to criminal cases.* – The provisions of ***Rules 42, 44 to 46 and 48 to 56*** relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

There is no basis in law or the rules, therefore, to extend the scope of Rule 47 to criminal cases. As we explained in *Macalalag v. Ombudsman*,^[18] when there is no law or rule providing for this remedy, recourse to it cannot be allowed, *viz.*:

Parenthetically, R.A. 6770 is silent on the remedy of annulment of judgments or final orders and resolutions of the Ombudsman in administrative cases. In *Tirol, Jr. v. Del Rosario*, the Court has held that since The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases only, the right to appeal is not to be considered granted to parties aggrieved by orders and decisions of the Ombudsman in criminal or non-administrative cases. The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right. ***This legal axiom is also applicable and even more true in actions for annulment of judgments which is an exception to the rule on finality of judgments.***^[19]

The Petition for Annulment of Judgment of the February 29, 2000 Decision of the RTC in Criminal Case No. 103677 was therefore an erroneous remedy. It should not have been entertained, much less granted, by the CA.

Even on substantive grounds, the Petition for Annulment of Judgment does not pass muster.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting,^[20] and only if the judgment sought to be annulled was rendered by a court lacking jurisdiction or through proceedings attended by extrinsic fraud.^[21]

When the ground invoked is extrinsic fraud, annulment of judgment must be sought within four years from discovery of the fraud, which fact should be alleged and proven.^[22] In addition, the particular acts or omissions constituting extrinsic fraud must be clearly established.^[23]

Extrinsic or collateral fraud is trickery practiced by the prevailing party upon the unsuccessful party, which prevents the latter from fully proving his case. It affects not the judgment itself but the manner in which said judgment is obtained. ^[24]

In the present case, respondent Bitanga complained that his own counsel perpetrated fraud upon him by abandoning his cause. He attributed the following acts and omissions to them:

1. Atty. Benjamin Razon failed to inform his client of the scheduled hearings for the reception of defense evidence. This resulted in depriving herein petitioner of a chance to prove his innocence by presenting a valid defense;
2. He failed to attend the scheduled hearing for reception of petitioners' evidence for which reason the case was deemed submitted for decision without his evidence;
3. He never bother to verify what transpired at the hearing he failed to attend, and thus, was not able to file the necessary pleadings to lift the order considering the case submitted for decision without petitioners' evidence;
4. He withdrew his appearance as counsel for the petitioner without getting the express conformity of his client. Thus, the court appointed a counsel *de officio* from the Public Attorney's Office;
5. The counsel *de officio*, however, exerted no effort in contacting the petitioner to prepare him for defense evidence. He simply submitted the case for decision and waived the presentation of Defense evidence;
6. After receiving the court a quo's adverse decision, convicting herein petitioner, he did not notify or inform his clients, herein petitioners; and
7. He did not appeal the case to the Court of Appeals; or avail themselves of other remedies under the law.^[25]

The CA equated the foregoing behavior of said counsels to extrinsic fraud in that it impaired Bitanga's right to due process and rendered the proceedings in Criminal Case No. 103677 a farce. Citing a ruling of the appellate court in *Sps. Carlos and Erlinda Ong v. Nieves Jacinto, et al.*,^[26] the CA held:

While it is true that neglect or failure of counsel to inform his client of an adverse judgment resulting in the loss of his right to appeal will not justify setting aside a judgment that is valid and regular on its face, this