526 Phil. 115

# FIRST DIVISION

# [ G.R. NO. 145945, June 27, 2006 ]

## PEOPLE OF THE PHILIPPINES, PETITIONER, VS. VICTOR SUBIDA, RESPONDENT.

## D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is a Petition for Review on *Certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 54571 granting the petition for *certiorari* and prohibition of Victor C. Subida and nullifying the assailed Order[2] of the Regional Trial Court (RTC) of Pasig City, Branch 158, in *People v. Victor C. Subida*, Criminal Case Nos. 108742-44.

### The Antecedents

On September 8, 1995, Victor C. Subida was charged with illegal possession of ammunitions and two counts of frustrated homicide under separate Informations with the following accusatory portion:

*Criminal Case No. 108742*
*(for Illegal Possession of Ammunition)*

> "That on or about the 3rd day of September 1995, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, without any lawful purpose, legal authority of (*sic*) justifiable motive, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control seven (7) live ammunitions of .38 cal. revolver outside his residence, without first securing the necessary license or permit therefor, in violation of the aforecited law.
>
> CONTRARY TO LAW.
> City of Pasig."

*Criminal Case No. 108743*
*(for Frustrated Homicide)*

> "That on or about the 3rd day of September 1995, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with a .38 caliber with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Marilyn Galos y [Villesa] of her right forearm and left hip of her body, thereby inflicting upon the latter gunshot wounds, which would ordinarily cause her death, performing all the acts of execution which should have produced the crime of Homicide as a consequence but,

nevertheless, did not produce it by reason of cause or causes independent of her will, that is, due to the timely and able medical attendance rendered to said Marilyn Galos y Villesa.

CONTRARY TO LAW.
City of Pasig."

*Criminal Case No. 108744*
*(for Frustrated Homicide)*

"That on or about the 3rd day of September 1995, in the City of Pasig, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, conspiring and confederating together and mutually helping and aiding one another with one Celso Subida, who is still at large, armed with a firearm, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Pedro Galos y Escartin on the different parts of his body, thereby inflicting upon the latter gunshot wounds, which would ordinarily cause his death, performing all the acts of execution which should have produced the crime of Homicide as a consequence but nevertheless did not produce it by reason of cause or causes independent of his will, that is, due to the timely and able medical attendance rendered to said Pedro Galos y Escartin.

CONTRARY TO LAW.
City of Pasig."[3]

Upon arraignment, the accused pleaded not guilty to all the charges. On March 17, 1999, the People rested its case. The Court set the continuation of the trial of the accused to adduce his evidence on March 25, 1999.[4] The accused was present, but trial did not proceed because the Presiding Judge was sick. The trial was reset to April 7, 1999.[5] However, despite the presence of the accused, it did not proceed anew because the counsel of the accused was purportedly sick. Trial was again reset to April 22, 1999 subject to the latter's presentation of a verified medical certificate.[6] The accused testified on April 22, 1999, and his testimony was terminated also that day.[7]

Trial was set on May 5 and 12, 1999 for the accused to present his other witness, Jobel Mantes, who, however, failed to appear. On motion of the accused, the trial was cancelled and reset, for the last time, on May 12, 1999.[8] Because the public prosecutor was indisposed, trial was once again reset to May 27 and June 3, 1999, as additional setting.[9] The trial on May 27, 1999 had to be canceled because the counsel of the accused failed to appear again, and there was no proof that said counsel was sick. The trial court thereafter considered the accused to have rested his case and that the cases were deemed submitted for decision.[10]

Atty. Larry T. Iguidez, the counsel of record of the accused, withdrew his appearance on June 8, 1999.[11] On June 16, 1999, the law firm of Tan Acut & Madrid entered its appearance as new counsel,[12] and likewise filed a Motion for Reconsideration[13] of the May 27, 1999 Order on the following grounds:

THE HONORABLE COURT'S ORDER UNDULY DEPRIVES THE ACCUSED OF HIS RIGHT TO BE HEARD AND TO PRESENT EVIDENCE IN HIS DEFENSE, CONSIDERING THAT:

1. FAILURE OF COUNSEL FOR THE ACCUSED TO EXPLAIN HIS ABSENCE OR TO TIMELY POSTPONE THE HEARING DOES NOT NECESSARILY IMPLY WAIVER OF THE RIGHT OF THE ACCUSED TO PRESENT EVIDENCE.

2. THE HONORABLE COURT SHOULD HAVE ADEQUATELY ENSURED THE RIGHT OF THE ACCUSED TO BE HEARD BY HIMSELF AND BY COUNSEL.

3. THE SUBMISSION OF THE CASE FOR RESOLUTION UPON A SINGLE UNEXCUSED NON-APPEARANCE OF COUNSEL AT THE PRESENTATION OF DEFENSE EVIDENCE IS NOT IN ACCORD WITH DUE PROCESS DEPRIVING AS IT DOES THE ACCUSED OF THE OPPORTUNITY TO FULLY PRESENT HIS CASE.[14]

The accused, through his new counsel, pointed out that his previous lawyer was absent only twice and that the first instance was justified by illness. He averred that the absence of his counsel on May 27, 1999, although without any supporting medical certificate, did not amount to a waiver of his right to adduce additional evidence. Appended to the motion were the Affidavits[15] of Asuncion Rabago and Jobel Mantes whom the accused intended to present as witnesses. However, on July 15, 1999, the trial court issued an Order denying the motion.[16]

The accused, the petitioner therein, filed a Petition for *Certiorari* and Prohibition[17] with the CA assailing the May 27, 1999 and July 15, 1999 Orders of the RTC, thus:

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE QUESTIONED ORDERS, CONSIDERING THAT:

I

AS ACCUSED IN A CRIMINAL CASE, PETITIONER HAD A CONSTITUTIONAL RIGHT TO BE HEARD IN HIS DEFENSE.

II

HAVING RELIGIOUSLY ATTENDED ALL THE HEARINGS SET FOR THE PRESENTATION OF DEFENSE EVIDENCE, PETITIONER NEVER WAIVED HIS CONSTITUTIONAL RIGHT TO PRESENT EVIDENCE IN HIS DEFENSE.

III

PETITIONER STANDS TO BE CONVICTED OF CRIMES AFTER BEING DENIED HIS CONSTITUTIONAL RIGHT TO BE HEARD IN HIS DEFENSE.[18]

In its Comment[19] on the petition, the Office of the Solicitor General (OSG) averred that

> At the outset, public respondents herein adopt the oral arguments presented during the hearing for the issuance of preliminary injunction last February 17, 2000, to constitute as integral part of this Comment.
>
> Now, contrary to petitioner's contention that he was deprived of due process, the record shows that he had actually finished his testimony (*see TSN of April 22, 1999*) in the court *a quo* to belie his claim. What he actually refers to as having denied admission by the trial court are merely corroborating testimonies attached as affidavits in his petition (*Annex "O" and "P"*). It cannot be gainsaid however that the trial court's Order to terminate the presentation of defense evidence was caused by the repeated and unexplained absences of petitioner's counsel in all the hearings where he was given the opportunity to present his corroborating witnesses. (*Record, pp. 200, 221, 231, 244, 262, 293, 296, 299, 313, 317, and 369 – orders reflecting defense counsel's absence*).[20]

In his Reply,[21] petitioner countered –

> 16. Public respondents argue that through repeated and unexplained absences of petitioner's [counsel] in all hearings where he was given the opportunity to present his corroborating witness, the abrupt and premature termination of the presentation of defense evidence is justified. However, the records of the case show a different story.
>
> 17. Records in possession of the petitioner show that petitioner's counsel was only absent twice (2) during the scheduled presentation of defense evidence – on 07 April and 27 May 1999, the first of which was excused.
>
> 18. In contrast, the records would show that the prosecution's witnesses and/or counsel were also absent on the hearings on 30 September 1997, 6 November 1997, 4 December 1997, 12 February 1998, 11 March 1998, 18 March 1998, 3 June 1998, 17 June 1998, 12 August 1998, 26 August 1998, 10 September 1998, 8 October 1998, 16 December 1998, and failed to produce the formal offer of evidence on 12 February 1999 and 16 February 1999. In fact, respondent judge himself reset the case on many occasions for attending conferences and for being indisposed.
>
> 19. The harshness of respondent judge's treatment of petitioner is further shown by the fact that the prosecution was given all the opportunity to present its case, to the end that it took the prosecution no less than two (2) years to complete its evidence. This is in stark contrast to only six (6) settings afforded to petitioner, which nonetheless spanned a period of only two (2) months.

> 20. The foregoing only highlights the fact that, while the prosecution was given all the opportunity to present their evidence, and much leeway in the form of continuations and re-settings, respondent judge was unduly strict and harsh on the accused when his turn to present defense evidence finally arrived. Worse, instead of giving the accused the benefit of doubt, and construing the law and the rules in his favor, respondent judge did not even provide a level playing field, and did not give the accused a sporting chance at fair play as the dictates of due process requires. Notably, at that fateful day respondent judge halted proceedings, he himself saw that a witness was ready to testify for petitioner. All he had to do was appoint a counsel *de officio*.[22]

On October 31, 2000, the CA rendered judgment granting the petition and set aside the assailed Orders. The *fallo* of the decision reads:

> WHEREFORE, the orders of the trial court, dated 27 May 1999 and 15 July 1999 are hereby SET ASIDE and NULLIFIED. The trial court is ordered to proceed with the continuation of reception of defense's additional evidence. No costs.
>
> SO ORDERED.[23]

It was the turn of the People of the Philippines to seek relief and file a petition for review on *certiorari* in this Court, contending that:

> I
>
> Respondent Court of Appeals gravely erred in law, when it found denial of due process despite private respondent's and his counsel's *unjustified absences which manifest dilatory tactics.*
>
> II
>
> Respondent Court of Appeals gravely erred in law when it unjustifiably upheld private respondent's patent repeated violations of the *Speedy Trial Act of 1998* and SC Circular No. 38-98.[24]

In his Comment on the petition, respondent avers that trial on the merits of the case commenced on June 5, 1997 during which the witnesses of the prosecution and/or counsel were absent 13 times. The prosecution was scheduled to formally offer its evidence on February 9, 1999, February 12 and 16, 1999 and March 10, 1999 but it was only on March 17, 1999 that the prosecution finally rested its case. He insists that he did not adopt any dilatory tactics to delay the completion of his evidence. It was presumptive of the trial court to assume that the evidence he would adduce was merely corroborative, and while it had the discretion to stop further presentation of evidence, such discretion must be exercised with caution.

Petitioner asserts that the CA erred in finding that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction in ruling that respondent had waived his right to adduce additional evidence, and in considering the case submitted for decision. Respondent indulged in dilatory tactics to delay the presentation of his evidence as shown by the fact that he had been absent 4 times,