

SECOND DIVISION

[G.R. NO. 163181, October 19, 2005]

BONIFACIO L. CAÑAL, SR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

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. CR No. 24496 as well as its Resolution^[2] denying the motion for reconsideration thereof.

The Antecedents

Upon complaint of Daylinda P. Cañal, Bonifacio L. Cañal, Sr. was charged with Grave Oral Defamation in an indictment filed by the Chief of Police, Hinatuan, Surigao del Sur in the 7th Municipal Circuit Trial Court (MCTC) of Hinatuan-Tagbina, Surigao del Sur. The Information reads:

That on or about 8:30 o'clock in the morning of July 25, 1996, at the Municipal Circuit Trial Court Hall, Hinatuan, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent of bringing one Daylinda Cañal, into discredit, disrepute and contempt, did then and there willfully, unlawfully and feloniously and publicly speak and utter against said Daylinda Cañal the following insulting words and expressions, to wit: "AYAW MO KAHADLOK SA TESTIGOS NI DAYLINDA KAY WALAY BANCA-AGAN, NAHADLOK KAW KANG DAYLINDA, NABUHI ITON SA PANGAWAT, NABUHI ITON SA PANGAWAT" which if translated in English language will mean (You afraid to the witness of Daylinda who had no how, why you afraid to Daylinda, she live from stealing, she is a long time thieves) and other words of similar imports and as a result said defamatory utterance and expressions caused mental anguish, serious anxiety, social humiliation, and besmirched reputation, thereby giving rise to a moral damage in the amount of P10,000.00.

CONTRARY TO LAW: under Article 358 of the Revised Penal Code.^[3]

Upon his arraignment on November 20, 1997, with the assistance of Atty. Elias C. Irizari, as counsel *de parte*, Bonifacio pleaded not guilty to the charge against him.

^[4] The trial court thereafter set and conducted the trial of the case on the merits.

To prove Bonifacio's guilt, the prosecution presented two (2) witnesses, namely, Daylinda and Emelinda A. Kimilat.

Emelinda declared that at around 8:30 a.m. of July 25, 1996, while she was outside the courthouse of the 7th MCTC of Hinatuan-Tagbina, Surigao del Sur, she saw Bonifacio and clearly overheard him say in Filipino: "*Why should you be afraid of Daylinda's witnesses, they are all nincompoops. Daylinda is a thief! She has been long eking out a living as a thief.*" A number of persons outside the courthouse also heard the utterances of Bonifacio.^[5]

For her part, Daylinda recalled that upon hearing Bonifacio's offensive remarks, she felt utterly embarrassed and downright humiliated. She went inside the courtroom and simply cried her heart out.^[6]

After the prosecution had rested its case, Bonifacio, through his new counsel, Atty. Remedios R. Alvizo, manifested that he would be filing a demurrer to evidence within 15 days. None was, however, filed.

The trial court then set the reception of the evidence for the defense on November 12, 1998. On the said date, the trial was postponed as the witness for the defense, Carmelita Salas, was absent.^[7] The trial was reset to December 4, 1998. On the latter date, Bonifacio's counsel asked for a postponement and since the fiscal was also absent, the trial was reset once more to January 29, 1999.^[8]

At the scheduled hearing on January 29, 1999, Atty. Alvizo was again nowhere in sight, prompting the prosecution to orally move that the case be submitted for decision on the ground that the defense was deemed to have waived its right to present evidence. The trial court granted the motion over Bonifacio's objection.^[9] However, Bonifacio failed to file any motion for the reconsideration of the said Order.

The MCTC thereafter rendered judgment on July 2, 1999, the decretal portion of which reads:

IN VIEW OF THIS CIRCUMSTANCE, this court found the accused to be guilty beyond reasonable doubt of the crime of Grave Oral Defamation and he is hereby sentenced to suffer the penalty of six (6) months and one (1) day to two (2) years and four (4) months and one (1) day, and to pay moral damages in the amount of P5,000.00, compensatory damages in the amount of P2,000.00 and to pay the costs.

The accused is hereby ordered to suffer the penalty of imprisonment he having sentenced by this court in the previous case but he had filed a petition for probation.

SO ORDERED.^[10]

Bonifacio did not file any motion for the reconsideration of the decision, and instead appealed such ruling to the Regional Trial Court (RTC). On August 3, 2000, the RTC rendered judgment affirming the decision of the MCTC. The decretal portion reads:

After careful review of the record of this case, the trial court was right in declaring accused to have waived their (*sic*) right to present evidence after giving said accused several settings for the presentation of evidence. The court is convinced that the aforesaid penalty was properly

imposed especially because the accused has been previously convicted.

SO ORDERED.^[11]

The case was elevated to the CA via petition for review, and the appellate court affirmed *in toto* the RTC's decision. The *fallo* of the CA decision reads:

WHEREFORE, the Petition is DENIED. The Decision of the Regional Trial Court, Branch 29 of Bislig, Surigao del Sur is AFFIRMED. Costs against accused-petitioner.

SO ORDERED.^[12]

Bonifacio's motion for reconsideration of the decision was denied by the CA.

The petitioner is now before this Court, alleging that he was deprived of his right to due process, and pleads that the decision under review be vacated and the case remanded to the MCTC for reception of his evidence.

The Court initially denied the petition in a Resolution^[13] dated June 16, 2004, but upon motion for reconsideration of the petitioner, the petition was reinstated on September 27, 2004.^[14]

The petitioner alleges that the CA gravely erred in sustaining his conviction. He insists that he was unjustly deprived of his right to adduce evidence in his behalf due to the failings of his counsel, Atty. Alvizo, who was always absent. He argues that at the MCTC, he was invariably present and ready to present his evidence; it was his counsel that did him in and he should not be made to suffer for that. He further alleges that the appellate court failed to appreciate the true facts of his case.

The petition is denied for lack of merit.

The Court has laid down the criterion to determine whether an accused in a criminal case has been properly accorded due process of law in *Siquian v. People*:^[15]

" [I]f an accused has been heard in a court of competent jurisdiction and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, **with an opportunity to be heard**, and a judgment awarded within the authority of a constitutional law, then he has had due process of law. "

In the present case, the petitioner was afforded the chance to adduce evidence in his behalf, but due to the unjustifiable failure of his witness or/and counsel to appear at the hearings, the trial court declared that the case was deemed submitted for decision and considered only the evidence presented by the prosecution. The petitioner even failed to file any motion for the reconsideration of the said Order. The petitioner's mere physical presence during the scheduled hearings was not enough. What is equally important is his readiness to present his evidence, lest he will be deemed to have waived his right to adduce the same.

Contrary to the allegations of the petitioner, he was fully accorded the opportunity to present his evidence first, on November 12, 1998; second, on December 4, 1998;