

SECOND DIVISION

[G.R. No. 140719, October 26, 2001]

NICOLAS UY DE BARON, PETITIONER, VS. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

BELLOSILLO, J.:

This is a Special Civil Action for *Certiorari* assailing the *Resolution* of the Court of Appeals promulgated 10 September 1999 which ordered the reinstatement of the Government's appeal which was previously dismissed due to its failure to file the appellant's brief within the reglementary period.^[1]

The case stemmed from these antecedents: In 1991 First Guaranty Life Assurance Company, Inc. (FIRST GUARANTY), hired petitioner Nicolas Uy de Baron as an insurance agent to solicit applications for life insurance and annuities. De Baron steadily rose from the ranks until he was promoted to branch manager in 1995. From 1991 to 1996 he was consistently FIRST GUARANTY's top agent and even received various awards from the latter.^[2] However, in February of 1997 FIRST GUARANTY terminated their agency agreement.^[3]

On 14 March 1997 FIRST GUARANTY through its Executive Vice-President Jaime M. Santiago filed a complaint against De Baron for *Estafa* under Art. 315, par. 1, subpar. (b), of *The Revised Penal Code*. FIRST GUARANTY alleged that after an investigation it discovered that on 26 September 1994 De Baron obtained a "crossed check" payment worth P376,186.38 from a policy holder, Victor Kho, for the payment of premiums on the life insurance policies of the latter and his family. The "crossed check," Metrobank Check No. 924399, was issued by Kho to be deposited in the account of FIRST GUARANTY. But through De Baron's connivance with officers of Citytrust Bank, Blue Ridge/White Plains Branch, he was able to deposit the checks in his personal account. He then issued his personal checks to FIRST GUARANTY to pay for the premiums as they fell due, to wit: Citytrust Check No. 032687 for P66,937.50 dated 4 October 1994; Check No. 055911 for P212,748.88 dated 2 November 1994; and Check No. 055912 for P96,500.00 dated 7 November 1994. Thus, it was evident that De Baron appropriated the amount of P309,248.88 for his own use and benefit for one (1) month and the amount of P66,937.50 for one (1) week, to the damage and prejudice of complainant FIRST GUARANTY before issuing his three (3) personal checks to cover the amount of the Metrobank check issued by Kho in the name of FIRST GUARANTY.^[4]

Nicolas Uy de Baron countered that he did not misappropriate the P376,186.38 paid by Kho. Instead, he used the amount to pay for the premiums of the separate policies of the Kho family as they fell due. He stressed that he received P376,186.38 and paid FIRST GUARANTY the same amount through his personal

checks.^[5] He added that since he joined the insurance firm in 1991 it was an accepted practice for insurance agents to issue their personal checks for the payment of premiums. Hence, when policy holders issued checks for the payment of premiums, such checks were deposited in the agents' own account by special arrangements with their banks as it was the most convenient way for them to deduct their commission. And before the corresponding grace periods expired, the agents transmitted the premium payments to FIRST GUARANTY through their personal checks for which the latter issued the corresponding *Vouchers* and *Official Receipts*. As a matter of fact, it was only on 31 July 1996 when FIRST GUARANTY issued a memorandum prohibiting agents from paying the premiums by check "net of commissions" and using their personal checks. De Baron claimed that the complaint was only filed to deprive him of his lawfully earned commissions and to damage his reputation in the business community.^[6]

On 23 June 1997 Assistant Prosecutor Ella M. Delovino-Fernandez of the City Prosecution Office in Makati recommended the dismissal of the case. On 29 July 1997 the recommendation was approved by City Prosecutor Feliciano Aspi.^[7] On 24 August 1997 FIRST GUARANTY filed a *Motion To Reopen and/or To Reinvestigate* the case but on 12 September 1997, City Prosecutor Aspi denied the motion.^[8]

On 29 September 1997 FIRST GUARANTY filed a petition for review before the Department of Justice. On 13 January 1998 then Secretary Teofisto Guingona Jr. issued *Resolution No. 034, Series of 1998* which reversed and set aside the *Resolution* of the City Prosecutor and directed him to file an Information for *Estafa* against De Baron.^[9]

On 29 January 1998 the City Prosecutor filed an Information against De Baron before the Regional Trial Court of Makati for *Estafa* under Art. 315, par. 1, subpar. (b), of *The Revised Penal Code*. It was alleged therein that as insurance agent Nicolas de Baron received a "crossed check" in the amount of P376,186.38 with the obligation to remit the same to FIRST GUARANTY. However De Baron, by abusing FIRST GUARANTY's trust and confidence, misappropriated, misapplied and converted the aforesaid amount for his own use and benefit and refused to account for the same despite repeated demands from FIRST GUARANTY to the prejudice and damage of the latter.^[10]

On 24 February 1998 Nicolas de Baron filed a *Motion to Quash or For Second Judicial Determination of Probable Cause*.^[11] While this motion was under consideration the prosecution filed an *Urgent Motion to Amend Information (To Conform With the Findings of Facts as Contained in the Resolution Dated January 13, 1998 Rendered By Then Secretary of Justice Teofisto T. Guingona, Jr.)*.^[12] In the aforesaid urgent motion the prosecution sought to amend the *Information* from *Estafa* under Art. 315 par. 1, subpar. (b), to *Theft* under Art. 308 of the *Revised Penal Code*.

On 12 May 1998 the trial court issued an *Order* which denied the *Urgent Motion to Amend Information* and dismissed the case.^[13] The order of dismissal prompted the prosecution to file a Notice of Appeal and the records were forwarded to the Court of Appeals where the case was docketed as CA-G.R. CR No. 21984 entitled "*People of the Philippines v. Nicolas Uy de Baron*."

On 13 August 1998 the Court of Appeals issued a notice for the prosecution to file the appellant's brief within thirty (30) days which was received by the Docket Division of the Office of the Solicitor General (OSG) on 20 August 1998. The brief was therefore due on or before 19 September 1998.

On 1 December 1998 the OSG filed a *Motion To Admit Appellant's Brief*. According to Associate Solicitor Rex Bernardo L. Pascual, the brief was filed seventy-three (73) days late because "the appellant's brief was only received by the undersigned solicitor last October 29, 1998. The Resolution was attached to a follow-up letter on even date by the private prosecutor. Although the registry return card of the above resolution had been stamped last August 20, 1998 by the Docket Division of the Office of the Solicitor General (OSG), a verification of the official log books of the OSG reveals that said Resolution had not been officially recorded nor received by the OSG and its handling lawyer as evidenced by the attached affidavit explanation."
[14]

The Court of Appeals found the explanation unsatisfactory and dismissed the appeal for failure to file the appellant's brief within the reglementary period which expired on 19 September 1998.^[15] Consequently, the prosecution filed a *Motion for Reconsideration* and on 10 September 1999 the Court of Appeals issued the assailed *Resolution* which stated that:

In the interest of substantial justice, upon motion of herein appellant, the resolution of March 23, 1999 is SET ASIDE and the appeal then dismissed is REINSTATED. Accordingly, the appellant's brief is hereby admitted.

SO ORDERED.^[16]

Nicolas de Baron filed a *Motion for Reconsideration* of the 10 September 1998 *Resolution* but the appellate court denied it for lack of merit. Hence, this petition.

The sole issue in this case is whether the Court of Appeals abused its discretion amounting to lack or excess of jurisdiction when it reinstated the appeal despite being previously dismissed for failure of the prosecution to seasonably file the appellant's brief.

Petitioner De Baron argues that the Court of Appeals abused its discretion in granting respondent People's *Motion for Reconsideration* since the phrase "in the interest of substantial justice" is not reason enough to reinstate the appeal. Furthermore, respondent is estopped from imputing liability on petitioner because FIRST GUARANTY had long received without protest or objection the amount of P376,186.38 representing the premium payments of the Kho family.^[17]

The issue presented herein is certainly not new. In *Philippine Rabbit Bus Lines, Inc v. Galauran & Pilares Construction Co.*^[18] the Court held that there was no grave abuse of discretion on the part of the Court of Appeals when it reinstated the appeal which it earlier dismissed. In that case, the appellate court dismissed the appeal for appellant's failure to file the appellant's brief. It also denied appellant's subsequent *Motion for Reconsideration* and *Motion for Leave to File and Admit Second Motion for*

Reconsideration. However, upon the filing of a *Motion to Admit Appellant's Brief* the appellate court issued a resolution which stated that:

Acting upon appellant's `Motion to Admit Brief' filed on July 24, 1972 together with appellant's brief and appellee's `Opposition' filed on July 27, 1972, the Court RESOLVED that this Court's resolutions dated April 27, 1972, dismissing the appeal; Resolution dated June 21, 1972 denying the motion for reconsideration; Resolution dated July 25, 1972, denying appellant's `Motion for Leave to File and Admit Second Motion for Reconsideration' are all SET ASIDE and the appeal is hereby REVIVED. Appellant's brief filed on July 24, 1972 is deemed ADMITTED; and appellant is REQUIRED to forward to this Court the registry return card evidencing appellee's receipt of copies of appellant's brief within 5 days from notice hereof.

The appellee in that case then filed a petition for certiorari before this Court arguing that the Court of Appeals gravely abused its discretion when it admitted the appellant's brief. This Court held -

The petition is devoid of merit. It does not raise any genuine jurisdictional issue. Certiorari is a remedy designed for correction of errors of jurisdiction and not errors of judgment. Its function is to keep an inferior court within its jurisdiction; only jurisdictional questions may be raised in the petition for certiorari, including matters of grave abuse of discretion which is equivalent to lack of jurisdiction x x x x

In the case at bar, there was no grave abuse of discretion, amounting to lack of jurisdiction, committed by respondent Court of Appeals (1) when it set aside its resolution dated April 27, 1972 dismissing the appeal, and the resolution dated June 21, 1972, denying the motion for reconsideration; and (2) revived the appeal and admitted appellant's brief filed on July 24, 1972. It cannot be said that respondent Court of Appeals acted capriciously, arbitrarily and whimsically considering that "the rule is always in favor of liberality in construction so that the real matter in dispute may be submitted to judgment of the court. Imperfections of form and technicalities of procedure should be disregarded, unless substantial rights would otherwise be prejudiced" x x x x

As in the aforementioned case, we believe that the Court of Appeals did not abuse, much less gravely, its discretion when it issued the questioned *Resolution* of 10 September 1999. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words, where the power is exercised in an arbitrary manner by reason of passion or personal hostility, and it must be so patent or gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[19] But where the court has jurisdiction over the subject matter, the orders or decision upon all questions pertaining to the cause are orders or decisions within its jurisdiction and however erroneous they may be, they cannot