

## **EIGHTH DIVISION**

**[ CA-G.R. SP NO. 128558, March 28, 2014 ]**

**JOANA GINETE, PETITIONER, VS. HON. AIDA C. SANTOS,  
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 7,  
BATANGAS CITY, AND PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### **D E C I S I O N**

**REYES, JR., J.C., J.:**

Before Us is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Order dated November 5, 2012 of the Regional Trial Court (RTC), Branch 7, Batangas City, in Criminal Case No. 12354. The assailed Order denied petitioner's notice of appeal.

The antecedents:

In an Information (Rollo, pp. 44-45) dated May 27, 2002 and later docketed as Criminal Case No. 12354, petitioner Joana Ginete (hereinafter petitioner) was charged of Estafa, defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code (RPC).

Petitioner was arraigned on October 21, 2002. Assisted by a counsel *de officio*, she entered a plea of not guilty.

At the pre-trial, the defense admitted the existence of the counter-affidavit executed by petitioner on April 2, 2002 as well as petitioner's signature therein. Likewise admitted is the existence of the letter-appointment of petitioner as Accounting Staff of Montenegro Shipping Lines and her signature above the typewritten name Joana S. Ginete appearing in the Revenue Report.

Thereafter, trial on the merits ensued.

On June 21, 2012, the RTC rendered a Decision (Rollo, pp. 22-43) finding petitioner guilty of the offense charged against her. The dispositive portion thereof reads:

"WHEREFORE, judgment is hereby rendered finding accused JOANNA S. GINETE GUILTY beyond reasonable doubt of the crime of estafa under Article 315, paragraph 1(b) of the Revised Penal Code and sentencing her to suffer the indeterminate sentence of imprisonment for four (4) years and two (2) months of prision correccional, as minimum, to twenty (20) years of reclusion temporal, as maximum.

The accused is likewise ordered to indemnify MSLI the amount of P715,468.96 as actual damages and the costs of suit.

SO ORDERED.” (Rollo, pp. 42-43)

The RTC subsequently issued a Warrant of Arrest against petitioner. (Rollo, pp. 50-51)

On August 31, 2012, the RTC received a Notice of Appeal with Entry of Appearance (Rollo, pp. 47-48) whereby Darwin P. Dimen entered his appearance as counsel for the petitioner vice the Public Attorney's Office (PAO) and formally notified the RTC that petitioner is appealing the Decision dated June 21, 2012 to this Court.

On November 5, 2012, the RTC issued the assailed Order (Rollo, pp. 18-21) denying petitioner's notice of appeal. It explained that petitioner and her bondsmen were deemed to have been duly notified of all the hearings of the case, particularly on the initial presentation of defense evidence on October 5, 2011, February 8, 2012 and on the promulgation of the decision on June 27, 2012, as evidenced by the returns made by the subpoena server. It further explained that if petitioner indeed transferred to a new address, it was then her duty to inform the court in writing of her new address. Thus, according to the RTC, petitioner cannot claim that she has been deprived of due process and since her failure to appear was without justifiable cause, she lost the remedies available to her, including the remedy of appeal.

Aggrieved over the denial of her notice of appeal, petitioner now comes before this Court via the instant petition, raising the following issues-

“WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OR EXCESS OF HER JURISDICTION WHEN SHE DECLARED PETITIONER TO HAVE WAIVED HER (PETITIONER) RIGHT TO PRESENT EVIDENCE WHEN SHE DECIDED THE CASE SANS PETITIONER'S EVIDENCE AND PROMULGATED THE DECISION IN ABSENTIA DESPITE PETITIONER'S WAIVER OF APPEARANCE AND HER (PUBLIC RESPONDENT'S) FAILURE TO USE THE COURT'S COERCIVE POWER LIKE ISSUING A WARRANT OF ARREST TO DETERMINE IF PETITIONER HAD JUMPED BAIL OR THE NOTICES JUST FAILED TO REACH HER BY THE SHEER FAULT OF THE SERVING OFFICER[;] [AND]

WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OR EXCESS OF HER JURISDICTION WHEN SHE DENIED THE NOTICE OF APPEAL FILED BY PETITIONER BY APPLYING THE MAPALAO DOCTRINE.” (Rollo, p. 9)

The petition must be denied.

At the outset, it must be emphasized that the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure is a remedy designed only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. (*Abrera vs. Barza*, 599 SCRA 534, 554-555)

*Grave abuse of discretion* is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. (*Beluso vs. Comelec*, 621 SCRA 450, 456 [2010]) For an act to be struck down as having been done with

grave abuse of discretion, the abuse of discretion must be patent and gross. (Fajardo vs. Court of Appeals, 570 SCRA 156, 163 [2008])

After a judicious evaluation of the records, this Court finds no grave abuse of discretion on the RTC for denying petitioner's notice of appeal.

The holding of trial in absentia is authorized under Section 14 (2), Article III of the 1987 Constitution. It provides:

“(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appeal is unjustifiable.” (Underscoring supplied)

Rule 115 of the Revised Rules of Criminal Procedure casts the foregoing provision in a more detailed manner and the pertinent provision as regards waiver of appearance is provided under Section 1(c) thereof. It reads:

“SECTION 1. Rights of Accused at the Trial. — In all criminal prosecutions, the accused shall be entitled to the following rights:

xxx xxx xxx

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

xxx xxx xxx.”

In the instant case, petitioner voluntarily waived her right to appear and be present in all subsequent hearings when she filed a Waiver of Appearance on February 9, 2005. (Rollo, p. 46) Despite the unqualified waiver made by petitioner, the RTC notified her when the case was set for the initial presentation of evidence for the defense on October 5, 2011. (Rollo, p. 35) The return, however, of said notice contained the information that petitioner could not be located at the given address. (*Ibid.*) Hence, the presentation of evidence was reset to February 8, 2012 and petitioner's counsel who was then present was warned in open court that petitioner's failure to appear on the next scheduled hearing will be deemed a waiver on her part to present evidence. (*Ibid.*)