



Republic of the Philippines  
**Supreme Court**  
 Manila

CERTIFIED TRUE COPY  
  
 WILFREDO V. LAPITAN  
 Division Clerk of Court  
 Third Division  
 MAR 22 2016

**THIRD DIVISION**

**FE P. ZALDIVAR,**  
 accompanied by her husband  
**ELIEZER ZALDIVAR,**  
 Petitioner,

**G.R. No. 197056**

Present:

VELASCO, JR., J.,  
*Chairperson,*  
 PERALTA,  
 PEREZ,  
 REYES, and  
 JARDELEZA, JJ.

- versus -

**PEOPLE OF THE PHILIPPINES**  
 and **MAMERTO B. DUMASIS,**  
 Respondents.

Promulgated:

March 2, 2016

x----------x

**RESOLUTION**

**REYES, J.:**

Petitioner Fe P. Zaldivar (Zaldivar) filed the present petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court questioning the Decision<sup>2</sup> dated May 31, 2010 and Resolution<sup>3</sup> dated December 15, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 02085, which set aside the Orders<sup>4</sup> dated November 18, 2005 and June 20, 2006 of the Regional Trial Court (RTC) of Iloilo City, Branch 23, in Criminal Case No. 03-57161.

<sup>1</sup> Rollo, pp. 4-30.

<sup>2</sup> Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Socorro B. Inting and Eduardo B. Peralta, Jr. concurring; id. at 31-38.

<sup>3</sup> Id. at 39-40.

<sup>4</sup> Rendered by Judge Edgardo L. Catilo.

A

### Facts

Zaldivar and Jeanette Artajo (Artajo) were charged with Estafa pursuant to a complaint filed by respondent Mamerto Dumasis (Dumasis) before the RTC, which was initially raffled to Branch 33. Pre-trial conference was held by the trial court and a Pre-Trial Order was issued on the same date, February 15, 2005. Zaldivar and her co-accused Artajo were then arraigned and both pleaded not guilty to the crime charged.<sup>5</sup>

During the trial of the case, the prosecution presented Alma Dumasis and Delia Surmieda as witnesses, and both identified their respective affidavits, which constituted their direct testimonies. Zaldivar's counsel, Atty. Salvador Cabaluna, opted not to cross-examine the witnesses, while Artajo's counsel was deemed to have waived his right to cross-examine in view of his absence despite notice.<sup>6</sup>

Dumasis, by himself and without the consent or acquiescence of the public prosecutor subsequently filed a Motion for Inhibition against Judge Virgilio Patag, which was granted by the latter. Hence, the case was re-raffled to Branch 23, presided by Judge Edgardo Catilo (Judge Catilo).<sup>7</sup>

On November 18, 2005, the RTC issued an Order, denying the admission of the prosecution's exhibits. The trial court also nullified and set aside the previous proceedings conducted and set the case anew for pre-trial conference. The dispositive portion of the order reads:

WHEREFORE, in view of the foregoing considerations, this Court orders the following:

a) The proceedings in this case wherein prosecution witnesses were presented but whose affidavits were only considered as their direct testimonies, are hereby nullified and set aside for want of procedural due process:

b) The prosecution's formal offer of exhibits is also set aside for being premature, in view of the declaration of nullity of the proceeding for the presentation of prosecution witnesses; and

c) In the greater interest of justice, this case is set for pre-trial conference anew to consider matters not covered by the pre-trial conference last February 15, 2005.

The pre-trial conference in this case is set on January 19, 2006 at 8:30 in the morning.

---

<sup>5</sup> *Rollo*, p. 5.

<sup>6</sup> *Id.* at 32.

<sup>7</sup> *Id.* at 33.

A

Notify the Public Prosecutor, the complaining witness, both accused, their surety, and their counsel.

SO ORDERED.<sup>8</sup>

Zaldivar then filed on January 16, 2006 a Motion to Declare Prosecution's Case Terminated, which was denied by the RTC in its Order dated March 10, 2006. Zaldivar filed a Motion for Reconsideration, but it was also denied in the Order dated June 20, 2006.<sup>9</sup>

Aggrieved, Zaldivar filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA, where the issues submitted for resolution are as follows:

- (1) **whether, by presenting only the affidavits of its witnesses, the prosecution failed to prove the commission of the crime charged, and which should have resulted in the dismissal of the criminal case; and**
- (2) **whether there was grave abuse of discretion committed by Judge Catilo in nullifying the proceedings and setting the case anew for pre-trial.**<sup>10</sup>

In the assailed Decision dated May 31, 2010, the CA found strong and compelling reasons to review the findings of the trial court presided by Judge Catilo, and set aside the Orders dated November 18, 2005 and June 20, 2006.<sup>11</sup> The dispositive portion of the CA decision provides:

**WHEREFORE**, in view of the foregoing, the assailed twin Orders rendered by the [RTC], Branch 23, Iloilo City in Criminal Case No. 03-57161 dated November 18, 2005 and June 20, 2006 respectively, are hereby *SET ASIDE* and the trial court is hereby *DIRECTED* to proceed with the trial of the case.

SO ORDERED.<sup>12</sup>

The CA dismissed Zaldivar's theory that the prosecution failed to prove by competent and admissible evidence the crime as charged in view of the prosecution's act of merely presenting the affidavits of its witnesses in lieu of giving their testimonies in open court. The CA ruled that such conclusion is best left to the sound judgment of the trial court and that the

---

<sup>8</sup> Id.  
<sup>9</sup> Id. at 33-34.  
<sup>10</sup> Id. at 34.  
<sup>11</sup> Id. at 35.  
<sup>12</sup> Id. at 38.

A

prosecution presented its evidence in a manner that it deems fit over which neither Zaldivar nor the trial judge has no control.<sup>13</sup>

The CA also ruled that Judge Catilo grossly abused the exercise of his discretion and judgment when he nullified the pre-trial proceedings taken before Branch 33 and ordered the conduct of a new pre-trial. According to the CA, the trial court's order is tantamount to ordering a new trial or re-opening of the case to the prejudice of the rights of the accused.<sup>14</sup> The CA agreed with the Office of the Solicitor General's (OSG) contention that Judge Catilo is without authority to nullify and set aside the proceedings already conducted and to set the case for a second pre-trial conference to consider matters, which were not covered in the first pre-trial conference held on February 15, 2005.<sup>15</sup> Moreover, the CA stated that instead of calling for a new pre-trial, Judge Catilo could recall witnesses as provided for in Section 9, Rule 132 of the Rules of Court.<sup>16</sup>

Zaldivar filed a Motion for Reconsideration, which was denied by the CA in its Resolution dated December 15, 2010. Unsatisfied, she instituted this petition grounded on the same issues raised in the CA.

Zaldivar points out that the denial of the admission of exhibits of the prosecution upon timely and sustained objections of the accused has the effect of terminating the case of the prosecution for failure to adduce competent and admissible evidence during the trial proper.<sup>17</sup> Moreover, she argues that the prosecution has lamentably failed to establish by competent and admissible evidence the crime as charged and to prove the guilt of the accused beyond reasonable doubt and, therefore, the case should be dismissed instead of being tried anew or re-opened for further proceedings.<sup>18</sup> Finally, she contends that the RTC's Order dated November 18, 2005 directing the conduct of another pre-trial or re-opening of the case violates her right not to be prosecuted and tried twice on the same information against her.<sup>19</sup>

### **Ruling of the Court**

The assailed CA decision and resolution are affirmed for the following reasons:

---

<sup>13</sup> Id. at 35.  
<sup>14</sup> Id.  
<sup>15</sup> Id. at 35-36.  
<sup>16</sup> Id. at 37.  
<sup>17</sup> Id. at 21.  
<sup>18</sup> Id. at 24.  
<sup>19</sup> Id. at 25.

The CA was correct in ruling that Zaldivar's contention that the prosecution failed to establish by competent and admissible evidence of the crime charged is best left to the sound judgment of the trial court.<sup>20</sup> Zaldivar should be reminded of the rule that "the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits."<sup>21</sup> Unless Zaldivar files a demurrer to the evidence presented by the prosecution,<sup>22</sup> she cannot enjoin the trial court to terminate the case on the ground of the prosecution's alleged failure to establish and prove her guilt beyond reasonable doubt.<sup>23</sup> The validity and merits of the prosecution's accusations, or Zaldivar's defense for that matter, as well as admissibility of testimonies and evidence,<sup>24</sup> are better ventilated during trial proper.

The CA, likewise, correctly found grave abuse of discretion on the part of the trial court when it nullified the proceedings previously conducted and ordered anew a pre-trial of the case. Note that one of the main reasons presented by Judge Catilo in nullifying the pre-trial proceedings was that the proceedings conducted after the pre-trial conference did not comply with the prescribed procedure in the presentation of witnesses.<sup>25</sup> But as propounded by the CA, and even the OSG who appeared for Judge Catilo, what the trial court should have done to correct any "perceived" procedural lapses committed during the presentation of the prosecution's evidence was to recall the prosecution's witnesses and have them identify the exhibits mentioned in their respective affidavits.<sup>26</sup> This is explicitly allowed by the rules, specifically Section 9, Rule 132 of the Rules of Court, which provides:

*Sec. 9. Recalling witnesses* - After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of court. The court will grant or withhold leave in its discretion as the interest of justice may require.

The trial court may even grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question, for strict observance of the order of trial or trial procedure under the rules depends upon the circumstance obtaining in each case at the discretion of the trial

---

<sup>20</sup> Id. at 35.

<sup>21</sup> *Singian, Jr. v. Sandiganbayan (3<sup>rd</sup> Division)*, G.R. Nos. 195011-19, September 30, 2013, 706 SCRA 451, 475, citing *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 49-50 (2005).

<sup>22</sup> Rule 119, Section 23 of the Rules of Court reads, in part: "After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. x x x" Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. (*People v. Go*, G.R. No. 191015, August 6, 2014, 732 SCRA 216, 237-238.)

<sup>23</sup> See *rollo*, p. 24.

<sup>24</sup> Id.

<sup>25</sup> Id. at 14-15.

<sup>26</sup> Id. at 36.

A

judge.<sup>27</sup>

Another reason adduced by the trial court in nullifying the pre-trial proceedings was that “[t]he pre-trial order of February 15, 2005 did not contain x x x matters ought to be the subject matter of a pre-trial conference under Sec. 1, Rule 118 of the Revised Rules on Criminal Procedure.”<sup>28</sup>

The pertinent provision governing pre-trial in criminal cases states:

SEC. 1. *Pre-trial; mandatory in criminal cases.* – In all criminal cases cognizable by the Sandiganbayan, [RTC], Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) plea bargaining;
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.<sup>29</sup>

In this case, there is nothing on record that will show any disregard of the rule. Pieces of evidence were marked, objections thereto were raised, issues were identified, no admissions on factual matters were arrived at, and trial dates were set.<sup>30</sup> As found by the CA, “[a] close scrutiny of the Pre-Trial Conference Order dated February 15, 2005, would show that there was due compliance with the Rules relative to the conduct of pre-trial. x x x Verily, there is nothing in the pre-trial order which calls for its nullification as the same clearly complies with the Rules.”<sup>31</sup> And while the Court recognizes the trial court’s zeal in ensuring compliance with the rules, it cannot, however, simply set aside the proceedings that have been previously duly conducted, without treading on the rights of both the prosecution and the defense who did not raise any objection to the pre-trial proceedings. Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties and to take the trial of cases out of the realm of surprise and maneuvering. Its chief objective is to simplify, abbreviate and expedite or dispense with the trial.<sup>32</sup> In this case, this purpose was

<sup>27</sup> *Valencia v. Sandiganbayan*, 510 Phil. 70, 81-82 (2005).

<sup>28</sup> *Rollo*, p. 15.

<sup>29</sup> REVISED RULES ON CRIMINAL PROCEDURE, Rule 118.

<sup>30</sup> *See rollo*, pp. 36-37.

<sup>31</sup> *Id.* at 37.

<sup>32</sup> *LCK Industries, Inc. v. Planters Development Bank*, 563 Phil. 957, 968-969 (2007).

A

clearly subverted when the trial court hastily set aside the pre-trial proceedings and its results. Absent any palpable explanation as to why and how said proceedings were conducted in violation of the rules and thus should be set aside, the Court sustains the CA's finding that the trial court committed grave abuse of discretion in nullifying the previous proceedings and setting the case anew for pre-trial.


**WHEREFORE**, the petition for review is **DENIED** for lack of merit. The Decision dated May 31, 2010 and Resolution dated December 15, 2010 of the Court of Appeals in CA-G.R. SP No. 02085 are hereby **AFFIRMED**. The Regional Trial Court of Iloilo City, Branch 23, is **ORDERED** to proceed with Criminal Case No. 03-57161 with dispatch.

**SO ORDERED.**

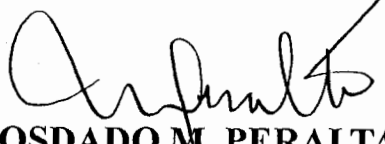


**BIENVENIDO L. REYES**  
Associate Justice


**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**DIOSDADO M. PERALTA**  
Associate Justice




**JOSE PORTUGAL PEREZ**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



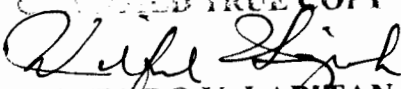
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

COPIED TRUE COPY  
  
**WILFREDO V. LAPID**  
Division Clerk of Court  
Third Division  
MAR 22 2016