



SUPREME COURT OF THE PHILIPPINES
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TIME: 9:47

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ROSEMARIE ERIBAL BOWDEN,
represented by **FLORENCIO C.**
ERIBAL, SR.,

Petitioner,

- versus -

DONALD WILLIAM ALFRED
BOWDEN,

Respondent.

X ----- *M. A. Cabalag* ----- X

G.R. No. 228739

Present:

CARPIO, J., Chairperson,
*PERLAS-BERNABE,**
CAGUIOA,
REYES, J. JR., and
LAZARO-JAVIER, JJ.

Promulgated:

17 JUL 2019

DECISION

REYES, J. JR., J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 assailing the Decision¹ dated March 31, 2016 and the Resolution² dated October 26, 2016 of the Court of Appeals-Cebu City (CA-Cebu) in CA-G.R. SP No. 09291 entitled *Donald William Alfred Bowden v. Hon. Kristine B. Tiangco-Vinculado, in [her] capacity as Presiding Judge, MTCC, Branch 1, Roxas City, Prosecutor Ferald Jornales, and Rosemarie Eribal Bowden.*

* On official leave.
¹ Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Pablito A. Perez and Gabriel T. Robeniol, concurring; *rollo*, pp. 24-38.
² Id. at 40-43.

The Factual Antecedents

Rosemarie Eribal Bowden (petitioner) was the registered owner of a 2004 Mitsubishi Pajero (subject vehicle) with Plate No. FFD 228.³ The subject vehicle was sold to Virgilio S. Ramos (Ramos) without petitioner's consent by her then husband Donald William Alfred Bowden (respondent), a British national residing in Iloilo City. The marriage of petitioner and respondent was dissolved by virtue of a Decree of Divorce dated June 12, 2006.

Petitioner claimed that while she was in London, she entrusted the Original Receipt-Certificate of Registration (OR-CR) of the subject vehicle to her niece Juvelyn Enate.⁴ However, during petitioner's marriage with respondent, the latter executed an affidavit of loss⁵ of the OR-CR and submitted it to the Roxas City District, Office of the Land Transportation Office (LTO). This paved the way for the issuance of a new OR-CR to respondent which he used to execute a deed of sale⁶ of the subject vehicle in his favor. Respondent submitted the deed of sale to the LTO and a new CR was issued in his name. Both affidavit of loss and deed of sale bore forged signatures of petitioner, prompting her to file criminal complaints against respondent.

On August 28, 2006, Assistant City Prosecutor Alma N. Baniyas-Delfin filed two separate Informations before the Municipal Trial Court in Cities (MTCC), Branch 1, Roxas City charging respondent of the crimes of falsification of public document by a private individual and use of falsified documents, which read:

CRIMINAL CASE NO. C-06-15995-10

The undersigned Assistant City Prosecutor accuses DONALD WILLIAM ALFRED BOWDEN, a British national presently residing in Phase II, Land Heights Subd., Villa, Iloilo City, of the crime of FALSIFICATION OF PUBLIC DOCUMENT BY A PRIVATE INDIVIDUAL AND USE OF FALSIFIED DOCUMENTS, as defined and penalized under Article 172, in relation to Article 171, paragraph (1) of the Revised Penal Code, as amended, committed as follows:

That on or about the 18th day of January 2005, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, prepare and execute [an] Affidavit of Loss of the Certificate of Registration and Official Receipt of a Mitsubishi Pajero Wagon notarized by Atty. Marcelo

³ Id. at 49.

⁴ Ma. Jovelyn E. Enate in some parts of the *rollo*.

⁵ Id. at 51.

⁶ Id. at 53.

Augusto Cosgayon imitating the signature of Rosemarie Bowden y Eribal therein making it appear that she signed the same, knowing fully well that Rosemarie Bowden did not lose said documents and was not in the Philippines at that time, and thereafter presented said Affidavit of Loss at the Land Transportation Office, Roxas City District Office, which, relying thereon, issued a new Certificate of Registration and Official Receipt over the same vehicle. The accused acted with the wrongful intent of injuring a third person, specifically Rosemarie Bowden y Eribal, in violation of the public faith as to the truth of what is contained in a public document.

CONTRARY TO LAW.⁷

CRIMINAL CASE NO. C-06-15996-10

The undersigned Assistant City Prosecutor accuses DONALD WILLIAM ALFRED BOWDEN, a British national presently residing in Phase II, Land Heights Subd., Villa, Iloilo City, of the crime of FALSIFICATION OF PUBLIC DOCUMENT BY A PRIVATE INDIVIDUAL AND USE OF FALSIFIED DOCUMENTS, as defined and penalized under Article 172, in relation to Article 171, paragraph (1) of the Revised Penal Code, as amended, committed as follows:

That on or about the 20th day of June 2005, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, said accused did then and there willfully, unlawfully and feloniously, prepare and execute a Deed of Sale of Motor Vehicle notarized by Atty. Marcelo Augusto Cosgayon imitating the signature of Rosemarie Bowden y Eribal therein making it appear that she signed the same, knowing fully well that Rosemarie did not execute said document and was not in the Philippines at that time, and thereafter presented said Deed of Sale of Motor Vehicle at the Land Transportation Office, Roxas City District Office, which, relying thereon, transferred the ownership over the same vehicle from Rosemarie Bowden y Eribal to Donald William Alfred Bowden. The accused acted with the wrongful intent of injuring a third person, specifically Rosemarie Bowden y Eribal, in violation of the public faith as to the truth of what is contained in a public document.

CONTRARY TO LAW.⁸

On December 1, 2013, the petitioner submitted her formal offer of documentary exhibits.⁹

On February 26, 2014, the MTCC issued an Order¹⁰ admitting only the following documentary evidence of the petitioner:

⁷ Id. at 54.

⁸ Id. at 56.

⁹ Id. at 58-64.

¹⁰ Id. at 65.

EXHIBIT	DESCRIPTION	PURPOSE
G	Official Receipt No. 98432291 dated September 29, 2004 issued by Avescor Motors, Inc. in favor of Rosemarie E. Bowden	To prove that the subject vehicle was registered in the name of Rosemarie E. Bowden
I	Affidavit of Loss of the Official Receipt and Certificate of Registration dated January 18, 2005 purportedly executed by Rosemarie E. Bowden	To prove that the signature of Rosemarie E. Bowden was falsified in the affidavit of loss of the original certificate of registration of the subject vehicle
J	Second certificate of registration in the name of Rosemarie E. Bowden	To prove that the signature of Rosemarie E. Bowden was falsified in the affidavit of loss of the original certificate of registration of the subject vehicle
K	Deed of sale of the subject vehicle executed in favor of Donald Alfred William Bowden	To prove that the signature of Rosemarie E. Bowden was falsified in the deed of sale
O and series	Official Receipt no. 24667790-0 in the name of Virgilio S. Ramos	1. To prove that after the subject vehicle was registered in the name of Donald Alfred Bowden, the latter sold the subject vehicle to Ramos; and 2. To prove that the sale of the subject vehicle to Ramos is void because Donald Alfred William Bowden is not the owner of the subject vehicle
Q and series	Amended judicial affidavit of Juvelyn Enate	
T	Amended judicial affidavit of Florencio S. Eribal, Sr.	To prove the truthfulness of all the allegations in the judicial affidavit of Florencio S. Eribal, Sr.
U and series	Judicial affidavit of Rosemarie E. Bowden	To prove the truthfulness in her judicial affidavit
V	Divorce Decree dated June 12, 2006 issued by Trowbridge County, Court of London	To prove that as of June 12, 2006, the marriage of Donald Alfred William Bowden and Rosemarie Bowden has been dissolved with finality.

On April 4, 2014, respondent filed a demurrer to evidence¹¹ with leave of court claiming insufficiency of evidence. He argued that the petitioner failed to prove that he falsified the affidavit of loss and deed of sale and used them as alleged in the informations. In the judicial affidavits of petitioner's witnesses, Juvelyn Enate and Florencio S. Eribal, Sr. did not testify as to the identity of the person who affixed the forged signature of petitioner in the affidavit of loss and submitted the falsified document to the LTO. Even

¹¹ Id. at 76-86.

petitioner admitted in her judicial affidavit that she did not see respondent sign the affidavit of loss and deed of sale bearing her forged signature, more so present them to the LTO. Respondent likewise questioned petitioner's failure to present the original copy of the purported affidavit of loss and deed of sale.

On May 6, 2014, the MTCC issued an Order¹² denying the demurrer to evidence. While it agreed with respondent's assertion that the petitioner failed to prove that he forged her signature in the affidavit of loss and deed of sale and submitted them to the LTO, the MTCC stated that respondent must still explain in good faith how the subject vehicle was transferred to him, registered in his name, and subsequently sold to Ramos.

Respondent moved for the reconsideration of the May 6, 2014 Order.

On July 7, 2014, the MTCC modified the May 6, 2014 Order by granting the demurrer to evidence and acquitting respondent as to the charge of falsification. It held that petitioner failed to prove that respondent was the one who actually forged the questioned documents. It also noted that the informations are duplicitous, charging respondent with the commission of two crimes in each information. However, considering that respondent had been arraigned and had entered his plea of not guilty without a motion to quash having been filed, respondent was deemed to have waived the defects in the informations.¹³

On September 16, 2014, respondent filed a petition for *certiorari*¹⁴ before the Regional Trial Court (RTC) of Roxas City, alleging grave abuse of discretion on the part of the MTCC in denying the demurrer on the charge of use of falsified documents. Respondent averred that he cannot be tried for the crime of use of falsified documents as it was already included in the crime of falsification for which he was acquitted. Assuming that he can be prosecuted for the use of falsified documents, he pointed out that the petitioner failed to prove that he used the falsified affidavit of loss and deed of sale given that the purported CRs of the subject vehicle in his name and in the name of Ramos were not admitted as evidence for the petitioner. He also contended that the element of damage or intent to cause damage was wanting since at the time that he allegedly used the falsified documents, he was still married to petitioner and the subject vehicle remained a property of the marriage.

In its Decision¹⁵ dated December 10, 2014, the RTC dismissed the petition. It cited Section 23(5), Rule 119 of the Rules of Court stating that

¹² Id. at 87-89.

¹³ Id. at 90-95.

¹⁴ Id. at 96-108.

¹⁵ Id. at 110-113.

the order denying the demurrer shall not be reviewable by appeal or *certiorari* before judgment.

Respondent moved for reconsideration but the same was denied in an Order dated March 2, 2015.

The trial for the charge of use of falsified documents continued before the MTCC Branch 3. Respondent testified and denied the charges against him. On rebuttal, petitioner presented car dealer Erwin Lou Calungcagin who testified that it was respondent who sold the subject vehicle to him in Iloilo City and received the proceeds of the sale.

On appeal before the CA, respondent invoked the ruling of the Court in *Choa v. Choa*¹⁶ that *certiorari* is available to challenge the denial of a demurrer when such denial is attended with grave abuse of discretion.

On March 31, 2016, the CA rendered a Decision in favor of respondent, the dispositive portion of which states:

WHEREFORE, the instant appeal is GRANTED. The Decision dated December 10, 2014, of the Regional Trial Court, Branch 18, Roxas City, in a *certiorari* case docketed as Special Civil Action Case No. SCA-05-14, is REVERSED and SET ASIDE.

Donald Bowden's demurrer to evidence to the charge of use of falsified documents is GRANTED. Criminal Case No. C-06-15995-10 for the use of a falsified affidavit of loss, and Criminal Case No. C-06-15996-10 for the use of a falsified deed of sale, are DISMISSED, and petitioner Donald William Alfred Bowden is ACQUITTED of the crimes charged.

SO ORDERED.¹⁷

The CA ruled that the remedy of *certiorari* is available in exceptional circumstances when the denial of the demurrer to evidence is attended with grave abuse of discretion as in this case. It declared that with the MTCC's denial of the admission of the certificates of registration in the names of respondent and Ramos, petitioner failed to put up a *prima facie* case of use of falsified documents.

Aggrieved, petitioner filed a motion for reconsideration but the same was denied in a Resolution dated October 26, 2016.

Hence, this petition raising the sole error:

¹⁶ 441 Phil. 175, 182-183 (2002).

¹⁷ *Rollo*, p. 37.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE APPEAL INTERPOSED BY RESPONDENT CONSIDERING THAT THE ORDER DENYING DEMURRER TO EVIDENCE IS MERELY A PERCEIVED ERROR OF JUDGMENT AND NOT CORRECTIBLE BY CERTIORARI.¹⁸

Petitioner faults the CA for granting respondent's appeal and demurrer to evidence. She laments that the alleged grave abuse of discretion of the MTCC in denying the demurrer is wanting; thus, the RTC did not err in dismissing respondent's petition for certiorari.¹⁹ She stresses that the arguments and errors presented by the respondent in his demurrer are merely "[perceived] errors of judgment" not correctible by the extraordinary remedy of *certiorari*.²⁰ Petitioner further asseverates that the existence of the CR in the name of Ramos and the pieces of evidence admitted by the MTCC constitute "circumstantial evidence that, if unrebutted, can sustain conviction of [the] respondent." Finally, she emphasizes that the CA did not elaborate how the MTCC and the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in denying the demurrer to evidence insofar as the charge of use of falsified documents considering that the RTC merely applied Section 23, paragraph 5 of Rule 119²¹ of the Rules of Court.²²

Respondent, on the other hand, contends that petitioner resorted to a wrong remedy by filing a petition for review on *certiorari* under Rule 45 instead of a petition for *certiorari* under Rule 65. Citing *People v. Hon. Asis*,²³ respondent avers that *certiorari* under Rule 65 is the proper remedy to assail a judgment of acquittal whether at the trial court or at the appellate level pursuant to the finality-of-acquittal doctrine.²⁴ He takes interest on petitioner's belated submission of the judicial affidavit of Erwin Lou Calungcagin before the CA and acknowledges the same as an attempt to supplement the petitioner's evidence.²⁵

Our Ruling

The petition is barren of merit.

Under Section 23, paragraph 1, Rule 119 of the Rules of Court, a criminal action may be dismissed on the ground of insufficiency of evidence in two ways: (1) on the court's initiative, after an opportunity to be heard is accorded the prosecution; and (2) upon demurrer to evidence filed by the

¹⁸ Id. at 11

¹⁹ Id. at 12.

²⁰ Id. at 13.

²¹ The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

²² *Rollo*, p. 15.

²³ 643 Phil. 462, 469 (2010).

²⁴ *Rollo*, pp. 143-145.

²⁵ Id. at 149.

accused with or without leave of court. In both instances, the dismissal may be made only after the prosecution rests its case.

When the accused files a motion to dismiss by way of demurrer to evidence, it is incumbent upon the trial court to review and examine the evidence presented by the prosecution and determine its sufficiency to sustain a judgment of conviction beyond reasonable doubt. If competent evidence exists, the court shall deny the demurrer and the accused may still adduce evidence on his behalf if the demurrer was filed with leave of court. If filed without leave, the accused submits the case for judgment on the basis of the evidence of the prosecution. On the other hand, if the court finds the evidence insufficient to support a verdict of guilt, the court shall grant the demurrer and the criminal case shall be dismissed. Such dismissal is a resolution on the merits and tantamount to an acquittal. Any further prosecution of the accused after an acquittal is a violation of his constitutional right against double jeopardy.²⁶ Accordingly, an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence cannot be the subject of an appeal.

It bears stressing, however, that the Court is not at all precluded from reviewing an order of denial if it is shown that grave abuse of discretion attended its issuance. The case of *People v. Sandiganbayan*²⁷ (1st Division), is instructive:

The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law; and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused'[s] demurrer to evidence.

Such issues are brought to the attention of a reviewing court through the special civil action of *certiorari* under Rule 65 on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. In assailing the resolution of the Sandiganbayan, the petitioner resorted to this petition for review on *certiorari* under Rule 45, purportedly raising pure questions of law. This is erroneous for which reason this petition is dismissible outright. In *People v. Laguio*, the same procedural misstep was addressed by the Court in this wise:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused'[s] demurrer to evidence. This may be done *via* the special civil action of *certiorari* under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate

²⁶ *People v. Judge Laguio, Jr.*, 547 Phil. 296, 313 (2007).

²⁷ 637 Phil. 147 (2010).

court in an original special civil action via *certiorari*, the right of the accused against double jeopardy is not violated.

Unfortunately, what petitioner People of the Philippines, x x x filed with the Court in the present case is an appeal by way of a petition for review on *certiorari* under Rule 45 raising a pure question of law, which is different from a petition for *certiorari* under Rule 65.

x x x x

Also, in *Madrigal*, we stressed that the special civil action of *certiorari* and appeal are two different remedies mutually exclusive; they are neither alternative nor successive. Where appeal is available, *certiorari* will not prosper. In the dismissal of a criminal case upon demurrer to evidence, appeal is not available as such an appeal will put the accused in double jeopardy. *Certiorari*, however, is allowed.

For being the wrong remedy taken by petitioner People of the Philippines in this case, this petition is **outrightly dismissible**. The Court cannot reverse the assailed dismissal order of the trial court by appeal without violating private respondent's right against double jeopardy. (Emphasis and underscoring in the original)

Stated differently, although the dismissal order consequent to a demurrer to evidence is not subject to appeal, it is still reviewable but only by *certiorari* under Rule 65 of the Rules of Court. In such a case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus, rendering the assailed judgment void.

x x x x

The demurrer to evidence in criminal cases, such as the one at bench, is "filed after the prosecution had rested its case." As such, it calls "for an *appreciation of the evidence* adduced by the prosecution *and its sufficiency* to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion. Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed.²⁸ (Citations omitted)

In a nutshell, the remedy from an order of dismissal upon demurrer to evidence is a petition for *certiorari* under Rule 65 grounded on grave abuse of discretion amounting to lack or excess of jurisdiction or denial of due

²⁸ Id. at 158-161.

process which renders the consequent order of acquittal null and void. It being a nullity, the dismissal order does not result in jeopardy.²⁹

Petitioner files the instant petition for review on *certiorari* under Rule 45 of the Civil Procedure, instead of a petition for *certiorari* under Rule 65, hence, an erroneous remedy. On this point alone, the petition must be dismissed.

But even if a Rule 65 petition is filed, the same will not prosper since the CA did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the cases for use of falsified affidavit of loss and use of falsified deed of sale. The Court agrees with the CA that the petitioner fails to put up a *prima facie* case of use of falsified documents which justifies the grant of the demurrer but for a different reason.

The last paragraph of Article 172 of the Revised Penal Code penalizes two acts: *first*, the introduction of a falsified document as evidence in any judicial proceeding; and *second*, the use of a falsified document in any other transaction. The second punishable act presupposes that the person who used the falsified document is not the one who falsified such document. Thus, the elements of the crime of use of falsified document in any transaction (other than as evidence in a judicial proceeding) are: (1) the offender knew that a document was falsified by another person; (2) the false document is embraced in Article 171 or in any of subdivisions Nos. 1 and 2 of Article 172; (3) he used such document (not in judicial proceedings); and (4) the use of the false document caused damage to another or at least it was used with intent to cause such damage.³⁰ A person who falsified a document and used such falsified document shall be punished for the crime of falsification.

The information in Criminal Case No. C-06-15995-10 alleges that respondent prepared and executed an affidavit of loss of OR-CR by “imitating the signature of Rosemarie Bowden y Eribal therein making it appear that she signed the same” and submits it to the LTO which resulted in the issuance of a second OR-CR in the name of petitioner. The information in Criminal Case No. C-06-15996-10 meanwhile states that respondent executed a deed of sale in his favor imitating petitioner’s signature and thereafter, submits said deed to the LTO. Consequently, the LTO issued a new CR, this time, in the name of respondent as the owner of the subject vehicle. Obviously, the averments in the informations implicate respondent as the person who falsified the affidavit of loss and the deed of sale and used said falsified documents to the damage of petitioner. But it is striking to note that in the crime of use of falsified document, the person who used the

²⁹ *Judge Mupas v. People*, 675 Phil. 67, 80 (2011), citing *People v. Judge Laguio, Jr.*, supra note 25, at 315-316.

³⁰ *Lumancas v. Intas*, 400 Phil. 785, 796-797 (2000).

falsified document is different from the one who falsified it such that “[i]f the one who used the falsified document is the same person who falsified it, the crime is only falsification and the use of the same is not a separate crime.”³¹ Falsification of a public document and use of false document by the same person who falsified it constitute but a single crime of falsification. It follows, therefore, that with the dismissal of the case for falsification of public documents, the case for use of falsified documents has no leg to stand on.

A final note. The petitioner was given an opportunity to present her case. She has formally offered her evidence and actively participated in the trial. Petitioner was afforded her right to move for the reconsideration of the MTCC decision denying the demurrer to the charge of use of falsified documents. When the trial proceeded before the MTCC, the court allowed the petitioner to present Erwin Lou Calungcagin to whom respondent purportedly sold the subject vehicle. Indubitably, there is no denial of due process that warrants the filing of a Rule 65 petition.

WHEREFORE, the petition is **DENIED**. The March 31, 2016 Decision and the October 26, 2016 Resolution of the Court of Appeals-Cebu City in CA-G.R. SP No. 09291 are **AFFIRMED**.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

³¹ THE REVISED PENAL CODE, CRIMINAL LAW, Luis B. Reyes, Book II, 247 (2008 ed.).

(On Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

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



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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



LUCAS P. BERSAMIN
Chief Justice

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