SUPREME COURT
SECOND DIVISION

ARCANGEL GUTIB,
***Petitioner*,**

-versus-

G.R. No. 131209
August 13, 1999

COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,
***Respondents*.**
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R E S O L U T I O N

BELLOSILLO, *J.*:

This Motion for Reconsideration impels this Court to make a choice between two (2) courses of action: (a) to hold fast to the rule that the trial court's denial of a demurrer to evidence may not be disturbed but reviewed only through an ordinary appeal from the judgment after trial, not certiorari, and thus deny the motion for reconsideration and allow the court a quo to proceed with the trial;

or, (b) to give weight, as an overriding consideration, to the fact that the totality of the prosecution evidence is grossly insufficient to convict the accused of the crime charged and therefore grant the motion as well as the demurrer to the evidence, and dismiss the case then and there.

Arcangel Gutib, Godofredo Jayme, Abraham Felix, Carlos Tisoy, Rodolfo Caballes, Antonio Rosales and Paulino Hortelano were charged with Qualified Theft before the Regional Trial Court of Cebu City.[1] The Information alleged that Jayme, Felix, Tisoy, Caballes, Rosales and Hortelano, who were drivers of ERS Trucking Services (ERS) and who had access to the diesel fuel account of ERS through purchase orders (POs) issued by its owners, connived and confederated with Gutib, the cashier of Honeywest gasoline station, and with grave abuse of confidence, took, stole and carried away diesel fuel valued at P380,400.00, to the prejudice of ERS.[2]

The spouses Eduardo and Filomena Sy were the owners and operators of ERS which was engaged in the business of providing hauling services within the province of Cebu. ERS procured the fuel requirements of its trucks at Honeywest, among others. Whenever its drivers refilled the fuel tanks of their trucks, they only had to present ERS purchase orders to cashier Gutib who in turn would instruct the gasoline boy to load diesel fuel into the tanks corresponding to the amounts indicated in the purchase orders. The spouses Sy accused Gutib of conniving with the truck drivers in short selling them alleging that on several occasions Gutib induced the drivers to underfill their fuel tanks by giving them goodwill money, or exchanging their unused POs with cash.

In the Reinvestigation Report submitted to the trial court by the public prosecutor, it was recommended that five (5) of the accused drivers — Godofredo Jayme, Abraham Felix, Carlos Tisoy, Antonio Rosales and Paulino Hortelano — be discharged from the Information to be utilized as state witnesses against the remaining accused — Arcangel Gutib and Rodolfo Caballes — considering that the prosecution evidence was "very much insufficient to secure a conviction."[3] The Presiding Judge of RTC-Br. 16 to whom the case was originally assigned approved the recommendation and ordered the discharge of the five (5) accused drivers. Thus, accused Gutib

moved to inhibit the judge alleging that he was no longer confident that his case would be disposed of impartially. His motion was granted and the case was re-assigned to RTC-Br. 9. However, accused Caballes found out that the Branch Clerk of Court of Br. 9 was a relative of private complainants, hence, he also moved for the inhibition of the judge. The case was re-raffled to RTC-Br. 24, but since the same accused Caballes also had a relative there, he asked again for another assignment of the case. Ultimately, the case found its way to RTC-Br. 13 presided over by Judge Meinrado P. Paredes.

After the presentation of evidence by the prosecution, accused Gutib and Caballes filed their separate demurrers to the evidence with prior leave of court. Private complainants opposed the demurrer of Gutib but did not contest that of Caballes.

On 26 April 1996 Judge Paredes denied Gutib's demurrer to the evidence for lack of factual and legal basis, but granted that of Caballes; consequently, the case against Caballes was dismissed for "gross insufficiency of evidence."

Accused Gutib moved for the inhibition of Judge Paredes and reserved the filing of his motion for reconsideration with the next judge to whom the case would eventually be assigned.

On 26 September 1996 Gutib received notice that his case had been raffled to RTC-Br. 21. Forthwith, he filed his motion for reconsideration of the 26 April 1996 Order of RTC-Br. 13. However, Judge Jose P. Soberano Jr. of RTC-Br. 21 denied the motion.

Accused Gutib elevated the matter to the Court of Appeals on a petition for certiorari under Rule 65, but on 30 June 1997 the appellate court dismissed the petition for lack of merit holding that —

> it has been the consistent ruling of the Supreme Court that certiorari does not lie to challenge the trial court's interlocutory order denying a motion to dismiss by way of demurrer to evidence. The proper course of action is for the accused to present his evidence and await the decision which he may in due time appeal, if adverse.[4]

His motion for reconsideration having been denied by the appellate court on 28 October 1997, accused Gutib filed before us the instant petition for review. On 4 February 1998 and 13 May 1998, we denied the petition for review as well as the motion for reconsideration, respectively, for lack of reversible error. Seemingly unfazed by the series of setbacks suffered by him, petitioner Gutib filed on 19 June 1998 with leave of court another motion for reconsideration. This time we required respondents Court of Appeals and the People of the Philippines through the Solicitor General to comment on the second motion for reconsideration within ten (10) days from notice. On 25 November 1998, after several extensions of time, the Solicitor General submitted his comment thereon.

The issues to be resolved are: whether the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner's demurrer to the evidence; and, whether a petition for certiorari is the proper, appropriate and available remedy to question the trial court's order denying the demurrer to the evidence.

A second hard look at the records, particularly petitioner's demurrer to the evidence, convinces this Court of the merit of the instant motion and to grant reconsideration.

The trial court premised its denial of petitioner's demurrer to the evidence on the following: (a) the testimonies of the discharged witnesses zeroed in on petitioner as the alleged mastermind who induced them to exchange their POs with cash or underfill their fuel tanks; and (b) the demurrer to the evidence centered on credibility of witnesses, inconsistencies in the testimonies of prosecution witnesses, and weight and value of the prosecution evidence, which matters should be raised during the trial, and not prematurely on a demurrer to the evidence.[5]

We resolve. 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.[6] The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a

demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

In the instant case, we have thoroughly reviewed the records and we cannot help being drawn to the conclusion that the prosecution evidence against the accused is grossly insufficient to support a finding of guilt. The public prosecutor himself considered, to start with, that there was not enough evidence to secure a conviction, hence, the necessity of discharging five (5) of the accused to be utilized as state witnesses. But even so, as will be shown in the succeeding discussion, the testimonies of these witnesses were unable to make up for the inherent weakness of the prosecution; and, far from proving the precise degree of culpability of petitioner, they only disclosed exculpatory facts which clearly justify the grant of the demurrer, or warrant the dismissal of the case against petitioner —

First. Filomena Sy, one of the owners of ERS and complainant in this case, herself testified it was she and her husband who computed the number of fuel in liters that should appear on every PO based on the driving needs of the drivers for each destination —

Q: Who will determine the number of diesel fuel that will be listed in the PO to be given to the drivers?

A: My husband, myself and

Q: What is the basis for the number (sic) of diesel fuel that will be given to any driver for a particular trip that he will undertake?

A: That will all depend on the distance and how many trips that (he can) make that day.

Q: The distance from pier area to Mandaue City, what is the average diesel fuel that you and your husband will write in the PO?

A: The estimate is based in 1990 and earlier because the traffic condition now is different. Based on that period, from pier

to Mandaue City, we give an allowance of twenty (20) liters per trip.

Q: what is the estimated distance per liter that will be the basis of the PO that you are going to issue to each driver?

A: Actually, I admit I am not an expert but I have here the certification issued by the Secretary and President of Cebu Truckers Association, and this was given to me by my husband, who in three decades been also in that business, that per liter he estimated that it will run for two (2) kilometers, but according to Columbian Motors, because he also approached this firm, the ratio is three (3) kilometers per liter.

Q: Why is it that your husband and you had an estimate only of two (2) kilometers per liter consumption of your truck of diesel fuel considering that, according to you, there is a Columbian Motors' estimate that per liter it can go as far as three and a half (3.5) kilometers?

A: Because the estimate given by Columbian Motors [was] based on brand new [trucks], although our trucks are all in good condition because when the engine is out of order, we usually buy new engine instead of having it repaired.[7]

Second. Antonio Rosales, one of the accused discharged to be a state witness, corroborated the testimony of Filomena Sy when the former testified that the drivers were each given a limit of 20 liters of fuel per trip, which was only sufficient to negotiate the distance within Mandaue City —

Q: So, when you request for the purchase order, you only request for the number of liters sufficient to negotiate the distance between the garage towards the destination and back to the garage, is that correct?

A: It is not correct, sir, because we were given a limit of twenty (20) liters per trip

Q: In other words, this twenty (20) liters based on your estimate, is it sufficient volume to negotiate the distance of your hauling service?

A: Yes, sir, within Mandaue [City] only.[8]

Moreover, he testified that the POs were given only when there were hauling assignments, thus —

Q: And the management of ERS Trucking will not give you purchase orders if there was no hauling assignment given you, is that right?

A: Usually, we drivers of trailers ask for purchase orders when we are going to have some container vans

Q: Will you please tell us how the management will determine that your transport facilities already need fuel?

A: Because everytime we will have a trip, sir, we will ask for crude oil because I do not want to run out of fuel.[9]

Thus, it is evident that the issuance of the POs was tightly regulated, subject only to the availability of hauling assignments and the amount of fuel indicated in the POs was just sufficient for a particular hauling assignment.

Third. Godofredo Jayme, another accused discharged to be a witness for the government, testified that each PO was good for 20 liters which in turn was enough for two (2) hauling trips. Before another PO could be issued, the drivers of ERS were required to report that they had already undertaken two (2) hauling trips. He further testified that sometimes twenty (20) liters of fuel were not even sufficient if the trip was long, so they had to request for another PO —

Q: In other words, it is the intention of your employer that one PO will be good for one (1) hauling trip?

A: Twenty (20) liters is good for two (2) haulings, sir.

Q: In other words, before a PO is given, the employer will ask you whether you have completed two (2) trips before he gives you another PO?

A: Yes, sir, because when we will have our first trip in the morning if the gasoline is not sufficient because we have a long trip, we will ask another PO.

Q: In other words, the purpose of your employer in giving a PO sufficient only for two (2) trips is to prevent the drivers from selling or stealing unused gasoline, is that correct?

A: I do not know but that is what they want us to observe and comply.

Q: Now, in other words, if you were able to negotiate two (2) hauling trips, you have to again ask for another PO, is that correct?

A: Yes, sir.

Q: And if you are not given a second PO for a third trip you cannot perform your hauling trip because you already have no fuel for your truck, is that correct?

A: Yes, sir, because our fuel will be consumed already.

Q: Was there any instance that you ran out, you failed to perform any hauling assignment because you ran out of fuel?

A: There was never an instance that I ran out of fuel, sir.[10]

Fourth. Carlos Tisoy, still another accused utilized to be state witness, confirmed that a PO was good only for one (1) trip and the driver had to ask for another PO in order to make a second trip, and without a second PO, no second trip could be undertaken because the first PO was sufficient only for the first trip.[11] He also testified that never was there any complaint from the customers that ERS failed to undertake any delivery for lack of fuel.[12]

Culled from the foregoing, it is obvious that the possibility of short-filling of fuel tanks and/or exchanging POs with cash was remote because: (a) the amount of fuel represented by one (1) PO was sufficient only for a particular trip so that another PO was required to undertake another trip; (b) if the fuel tanks of the trucks were under-filled, there would have been instances when the drivers were unable to complete a particular hauling trip for lack of fuel provisions. But they were in unison when they asserted that there was no occasion when they ever ran out of fuel; (c) the issuance of POs was strictly regulated and monitored, i.e., before the drivers could procure a second PO from ERS they must first report to their employer that they had accomplished a prior hauling assignment for which a previous PO was issued; and, (d) if there was truly an anomaly regarding the fuel requisitioning of ERS trucks, it would have been easily detected and prevented by merely verifying from ERS records whether the total number of POs issued to the drivers for a given period tallied with the total number of hauling assignments undertaken by its trucks for the same period. Significantly, no evidence was presented to show that the number of completed hauling trips was not equal to the number of POs issued to the drivers.

Private complainants, obviously prudent businessmen, must have taken adequate measures to protect their interests from theft and other crimes against property to ensure the success of their business enterprise. Thus, it is reasonable to assume that ERS conducted regular inspections on the hauling area to verify whether the drivers were performing their duties; counter-checked with the different gasoline stations to make sure that the fuel represented by the POs was loaded into the trucks; and, sufficiently indicated in the POs the name of the specific gas station to which it could be presented and exchanged with gasoline to minimize the risk of, if not totally eliminate, pilferage.[13]

Paradoxically, despite the alleged pilferage of its fuel, Filomena Sy admitted that ERS Trucking steadily gained net profits from 1988 to 1992 ranging from more than P300,000.00 in 1988 to more than P400,000.00 in 1992,[14] and her fleet of 9 trucks when ERS started its trucking business in 1983 had grown to 32 trucks with 28 drivers

in 1990.[15] These figures all the more confirm that ERS had never been a victim of any anomaly or business sabotage concerning the fuel requisitioning of its trucks, otherwise, ERS would have seriously suffered from huge losses in profits.

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances.[16] To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused. In the instant case, the prosecution miserably failed to establish by sufficient evidence the existence of the crime of qualified theft. It is not enough that the state witnesses implicated petitioner as the one who masterminded the alleged pilferage of diesel fuel belonging to ERS either by under-filling the tanks of its trucks or by inducing ERS drivers to exchange their POs with cash; rather, it must be sufficiently proved that there was indeed fuel pilferage, with petitioner amassing in the process hundreds of thousands of pesos worth of diesel fuel, as alleged in the Information.

Prescinding from the foregoing, it was grave abuse of discretion for the trial court to refuse to weigh the prosecution evidence against petitioner, which was its bounden duty to do as trier of facts, and cursorily to ignore the arguments raised in his demurrer to the evidence on the simplistic explanation that they —

> centered on credibility of witnesses, inconsistencies in the testimonies of prosecution witnesses, and weight and value of the evidence presented by the prosecution.[17]

Had the trial court been more punctilious and thorough in its study and preparation of the case, it could have fully appreciated the weakness of the state evidence against petitioner, and that it was useless, not to say a waste of time and money, to proceed with the tedious process of trial and direct petitioner to adduce evidence in his defense, since it was obvious even from the beginning that petitioner could not be convicted of the crime charged. Curiously enough, the trial court disposed of the demurrer to the evidence of accused

Caballes on the merits, while refused to do the same with that of petitioner. Why the apparent discrimination?

On the second issue, the Court of Appeals held that certiorari does not lie to challenge the trial court's interlocutory order denying a motion to dismiss by way of a demurrer to the evidence. According to respondent appellate court, the proper remedy was for the accused to present his evidence during the trial after which the court, on its own assessment of the evidence submitted by both parties, would then render its judgment of acquittal or conviction. If the verdict is one of acquittal the case ends there. But if it is one of conviction, then appeal is the proper recourse.[18] But the rule is not absolute and admits of an exception. Thus where, as in the instant case, the denial of the motion to dismiss by the trial court was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may assail the order of denial on certiorari.

Moreover, it has been said that a wide breadth of discretion is granted a court of justice in certiorari proceedings.[19] The cases in which certiorari will issue cannot be defined, because to do so would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that certiorari is more discretionary than either prohibition or mandamus.[20] In the exercise of our superintending control over inferior courts, we are to be guided by all the circumstances of each particular case "as the ends of justice may require." So it is that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.[21]

This case presents compelling and exceptional facts which call for this appropriate remedy. As discussed elsewhere, petitioner satisfactorily demonstrated in his exhaustive demurrer to the evidence that the prosecution failed to prove the very crime for which he was being held to answer and, hence, there was no reason to hold him for trial. Indeed, an accused is always presumed innocent until the contrary is proved. Parenthetically, he has the right to be protected against hasty, malicious and oppressive prosecutions; to be secure from an open and public accusation of a crime; and, from the trouble, expenses and anxiety of a public trial. Similarly situated is the state, which must be shielded at all times from useless and expensive litigations that only

contribute to the clogging of court dockets and lay heavy toll on its limited time and meager resources. For this reason, it is better on balance that we look beyond procedural requirements and overcome the ordinary disinclination to exercise our supervisory powers. And this, to the end that the orders issued below may be controlled "to make them conformable to law and justice."[22]

WHEREFORE, the instant Motion for reconsideration is **GRANTED**. The Court of Appeals Decision of 30 June 1997 dismissing the petition for certiorari and its Resolution of 28 October 1997 denying reconsideration thereof, are **REVERSED** and **SET ASIDE**. The evidence not being sufficient to establish the guilt of petitioner ARCANGEL GUTIB his demurrer to the evidence is **GRANTED**, and the Information for Qualified Theft is **DISMISSED**. Consequently, he is **ACQUITTED** of the crime charged, and the bail bond posted for his provisional liberty is cancelled and released.

SO ORDERED.

Mendoza, Quisumbing and Buena, *JJ.*, concur.

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[1] People vs. Godofredo Jayme, et al., Crim. Case No. CBU-20044.
[2] Rollo, p. 169.
[3] Id., pp. 47-52; Annex "C."
[4] Id., p. 43; Annex "A."
[5] Id., pp. 137-139, Annex "I."
[6] Black's Law Dictionary, 5th Ed., 1979, p. 390.
[7] TSN, 14 December 1993, pp. 5-6.
[8] Id., 10 November 1992, p. 8.
[9] Id., 18 September 1992, p. 10.
[10] Id., 23 November 1992, pp. 5-6.
[11] Id., 22 July 1993, p. 7.
[12] Id., p. 10.
[13] Aside from Honeywest, ERS patronized other gasoline stations like GELAC and CARLAN, for which POs were likewise used in procuring fuel.
[14] TSN, 12 May 1993, pp. 10-11.
[15] Id., 11 May 1995, p. 9.
[16] Black's Law Dictionary, 3rd Ed., 1933, p. 695.
[17] Rollo, pp. 137-139; Annex "I."
[18] Citing Cruz vs. People, G.R. No. 67228, 9 October 1986, 144 SCRA 677, 681.

[19] 14 Am. Jur. 2d, pp. 783-784.
[20] 14 C.J.S., p. 138.
[21] See Lazatin vs. Kapunan, No. L-29894, 28 March 1969, 27 SCRA 613.
[22] See Rule 135, Sec. 5 (g), Rules of Court.