Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LITO BAUTISTA and JIMMY ALCANTARA,	**G.R. No. 189754**
Petitioners,	**Present:**
- *versus* -	VELASCO, JR., *J., Chairperson,* LEONARDO-DE CASTRO,* PERALTA, ABAD, and MENDOZA, *JJ.*
SHARON G. CUNETA-PANGILINAN,	**Promulgated:**
Respondent.	24 October 2012

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D E C I S I O N

PERALTA, *J.*:

Before the Court is the petition for review on *certiorari* seeking to set aside the Decision[1] dated May 19, 2009 and Resolution[2] dated September 28, 2009 of the Court of Appeals (CA), in CA-G.R. SP No. 104885, entitled *Sharon G. Cuneta-Pangilinan v. Hon. Rizalina T. Capco-Umali, in her capacity as Presiding Judge of the Regional Trial Court in Mandaluyong City, Branch 212, Lito Bautista, and Jimmy Alcantara*, which granted the petition for *certiorari* of respondent Sharon G. Cuneta-Pangilinan. The CA Decision reversed and set aside the Order[3] dated April 25, 2008 of the

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* Designated Acting Member per Special Order No. 1343 dated October 9, 2012.

1 Penned by Associate Justice Isaias Dicdican, with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Marlene Gonzales-Sison, concurring, *rollo*, pp. 33-42.

2 *Id.* at 45-46.

3 Per Judge Rizalina T. Capco-Umali, CA *rollo*, pp. 21-28.

Regional Trial Court (RTC), Branch 212, Mandaluyong City, but only insofar as it pertains to the granting of the Demurrer to Evidence filed by petitioners Lito Bautista (Bautista) and Jimmy Alcantara (Alcantara), and also ordered that the case be remanded to the trial court for reception of petitioners' evidence.

The antecedents are as follows:

On February 19, 2002, the Office of the City Prosecutor of Mandaluyong City filed two (2) informations, both dated February 4, 2002, with the RTC, Branch 212, Mandaluyong City, against Pete G. Ampoloquio, Jr. (Ampoloquio), and petitioners Bautista and Alcantara, for the crime of libel, committed by publishing defamatory articles against respondent Sharon Cuneta-Pangilinan in the tabloid *Bandera.*

In Criminal Case No. MC02-4872, the Information dated February 4, 2002 reads:

> That on or about the 24th day of April, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Jane/John Does unknown directors/officer[s] of *Bandera* Publishing Corporation, publisher of *Bandera*, whose true identities are unknown, and mutually helping and aiding one another, with deliberate intent to bring SHARON G. CUNETA-PANGILINAN into public dishonor, shame and contempt, did then and there wilfully, unlawfully and feloniously, and with malice and ridicule, cause to publish in *Bandera* (tabloid), with circulation in Metro Manila, which among others have the following insulting and slanderous remarks, to wit:
>
> *MAGTIGIL KA, SHARON!*
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> *Sharon Cuneta, the mega-taba singer-actress, I'd like to believe, is really brain-dead. Mukhang totoo yata yung sinasabi ng kaibigan ni Pettizou Tayag na ganyan siya.*
>
> *Hayan at buong ingat na sinulat namin yung interview sa kaibigan ng may-ari ng Central Institute of Technology at ni isang side comment ay wala kaming ginawa and all throughout the article, we've maintained our objectivity, pero sa interview sa aparadoric singer-*

actress in connection with an album launching, ay buong ningning na sinabi nitong she's supposedly looking into the item that we've written and most probably would take some legal action.

x x x

Magsalita ka, Missed Cuneta, at sabihin mong hindi ito totoo.

Ang hindi lang namin nagustuhan ay ang pagbintangan kaming palagi naman daw namin siyang sinisiraan, kaya hindi lang daw niya kami pinapansin, believing na part raw siguro yun ng aming trabaho.

Dios mio perdon, what she gets to see are those purportedly biting commentaries about her katabaan and kaplastikan but she has simply refused to acknowledge the good reviews we've done on her.

x x x

Going back to this seemingly disoriented actress who's desperately trying to sing even if she truly can't, itanggi mo na hindi mo kilala si Pettizou Tayag gayung nagkasama raw kayo ng tatlong araw sa mother's house ng mga Aboitiz sa Cebu more than a month ago, in connection with one of those political campaigns of your husband.

x x x

thereby casting publicly upon complainant, malicious contemptuous imputations of a vice, condition or defect, which tend to cause complainant her dishonor, discredit or contempt.

CONTRARY TO LAW.[4]

In Criminal Case No. MC02-4875, the Information dated February 4, 2002 reads:

That on or about the 27th day of March, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Jane/John Does unknown directors/officers of *Bandera* Publishing Corporation, publisher of *Bandera*, whose true identities are unknown, and mutually helping, and aiding one another, with deliberate intent to bring SHARON G. CUNETA-PANGILINAN into public dishonor, shame and contempt did, then and there wilfully, unlawfully and feloniously, and with malice and ridicule, cause to publish in *Bandera* (tabloid), with circulation in Metro Manila, which, among others, have the following insulting and slanderous remarks, to wit:

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4 CA *rollo*, pp. 30-31.

NABURYONG SA KAPLASTIKAN NI SHARON ANG MILYONARY[A]NG SUPPORTER NI KIKO!

FREAKOUT pala kay Sharon Cuneta ang isa sa mga loyal supporters ni Kiko Pangilinan na si Pettizou Tayag, a multi-millionaire who owns Central Institute of Technology College in Sampaloc, Manila (*it is also one of the biggest schools in Paniqui, Tarlac*).

x x x

Which in a way, she did. Bagama't busy siya (*she was having a meeting with some business associates*), *she went out of her way to give Sharon security.*

So, ang ginawa daw ni Ms. Tayag ay tinext nito si Sha[ron] para mabigyan ito ng instructions para kumportable itong makarating sa Bulacan.

She was most caring and solicitous, pero tipong na-offend daw ang megastar at nagtext pang "You don't need to produce an emergency SOS for me, I'll be fine."

Now, nang makara[t]ing na raw sa Bulacan si Mega nagtatarang daw ito at binadmouth si Pettizou. Kesyo ang kulit-kulit daw nito, atribida, mapapel at kung anu-ano pang mga derogatory words na nakarating siyempre sa kinauukulan.

Anyhow, if it's true that Ms. Pettizou has been most financially supportive of Kiko, how come Sharon seems not to approve of her?

"*She doesn't want kasi her husband to win as a senator because when that happens, mawawalan siya ng hold sa kanya," our caller opines.*

Pettizou is really sad that Sharon is treating her husband like a wimp.

"In public," our source goes on tartly, "pa kiss-kiss siya. Pa-embrace-embrace pero kung silang dalawa [na] lang parang kung sinong sampid kung i-treat niya si Kiko."

My God Pete, Harvard graduate si Kiko. He's really intelligent as compared to Sharon who appears to be brain dead most of the time.

Yung text message niyang "You don't need to produce an emergency SOS for me," hindi ba't she was being redundant?

Another thing, I guess it's high time that she goes on a diet [again]. Jesus, she looks 6'11 crosswise!

x x x

> *Kunsabagay, she was only being most consistent. Yang si Sharon daw ay talagang mega-brat, mega-sungit. But who does she think she is? Her wealth, dear, would pale in comparison with the Tayag's millions. Kunsabagay, she's brain dead most of the time.*
>
> *x x x*
>
> thereby casting publicly upon complainant, malicious contemptuous imputation of a vice, condition or defect, which tend to cause complainant her dishonor, discredit or contempt.
>
> CONTRARY TO LAW.[5]

Upon arraignment, petitioners, together with their co-accused Ampoloquio, each entered a plea of not guilty. Thereafter, a joint pre-trial and trial of the case ensued.[6]

Respondent's undated Complaint-Affidavit[7] alleged that Bautista and Alcantara were Editor and Associate Editor, respectively, of the publication *Bandera*, and their co-accused, Ampoloquio, was the author of the alleged libelous articles which were published therein, and subject of the two informations. According to respondent, in April 2001, she and her family were shocked to learn about an article dated March 27, 2001, featured on page 7 of *Bandera* (Vol. 11, No. 156), in the column *Usapang Censored* of Ampoloquio, entitled *Naburyong sa Kaplastikan ni Sharon ang Milyonaryang Supporter ni Kiko*, that described her as plastic (hypocrite), ingrate, mega-brat, mega-*sungit*, and brain dead, which were the subject of Criminal Case No. MC02-4875.[8] Another article, with the same title and similar text, also featured on the same date, appeared on page 6 of *Saksi Ngayon*, in the column *Banatan* of Ampoloquio.[9] Moreover, respondent averred that on April 24, 2001, Ampoloquio wrote two follow-up articles, one appeared in his column *Usapang Censored*, entitled *Magtigil Ka,*

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5 *Id*. at 32-34.
6 CA Decision dated May 19, 2009, p. 2; *rollo*, p. 34.
7 CA *rollo*, pp. 35-44.
8 *Id*. at 35-37, 45.
9 *Id*. at 37, 46.

Sharon!, stating that she bad-mouthed one Pettizou Tayag by calling the latter *kulit-kulit* (annoyingly persistent), *atribida* (presumptuous), *mapapel* (officious or self-important), and other derogatory words; that she humiliated Tayag during a meeting by calling the latter *bobo* (stupid); that she exhibited offensive behavior towards Tayag; and that she was a dishonest person with questionable credibility, which were the subject of Criminal Case No. MC02-4872.[10] Another article, entitled *Magtigil Ka, Sharon Cuneta!!!!*, also featured on the same date with similar text, and appeared on page 7 of *Saksi Ngayon* (Vol. 3, No. 285), in the column *Banatan* of Ampoloquio,[11] with the headline in bold letters, *Sharon Cuneta, May Sira?* on the front page of the said issue.[12] Respondent added that Ampoloquio's articles impugned her character as a woman and wife, as they depicted her to be a domineering wife to a browbeaten husband. According to Ampoloquio, respondent did not want her husband (Senator Francis Pangilinan) to win (as Senator) because that would mean losing hold over him, and that she would treat him like a wimp and *sampid* (hanger-on) privately, but she appeared to be a loving wife to him in public. Respondent denied that Tayag contributed millions to her husband's campaign fund. She clarified that Tayag assisted during the campaign and was one of the volunteers of her husband's *Kilos Ko* Movement, being the first cousin of one Atty. Joaquinito Harvey B. Ringler (her husband's partner in Franco Pangilinan Law Office); however, it was Atty. Ringler who asked Tayag to resign from the movement due to difficulty in dealing with her.

After presenting respondent on the witness stand, the prosecution filed its Formal Offer of Documentary Exhibits dated October 11, 2006, which included her undated Complaint-Affidavit.[13]

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10 *Id.* at 38-40.
11 *Id.* at 40, 49.
12 *Id.* at 40, 48.
13 CA Decision dated May 19, 2009, p. 2; *rollo*, p. 34. (The prosecution's Formal Offer of Documentary Exhibits, dated October 11, 2006, was not elevated to the CA so as to form part of the records of the case.)

On November 14, 2006, petitioners filed a Motion for Leave of Court to File the Attached Demurrer to Evidence.[14] In their Demurrer to Evidence,[15] which was appended to the said Motion, Bautista and Alcantara alleged that the prosecution's evidence failed to establish their participation as Editor and Associate Editor, respectively, of the publication *Bandera*; that they were not properly identified by respondent herself during her testimony; and that the subject articles written by Ampoloquio were not libelous due to absence of malice.

On April 25, 2008, the RTC issued an Order[16] granting petitioners' Demurrer to Evidence and dismissed Criminal Case Nos. MCO2-4872 and MCO2-4875. The trial court opined, among others, that since the prosecution did not submit its Comment/Opposition to the petitioners' Demurrer to Evidence, the averments therein thus became unrebutted; that the testimonial and documentary evidence adduced by the prosecution failed to prove the participation of petitioners as conspirators of the crime charged; and that during the direct examination on July 27, 2004 and cross-examination on August 1, 2006, respondent neither identified them, nor was there any mention about their actual participation.

As a consequence, the prosecution filed a Motion to Admit[17] dated May 29, 2008, with the attached Comment ([to] Accused Lito Bautista and Jimmy Alcantara's Demurrer to Evidence)[18] dated March 24, 2008, stating that during the pendency of the trial court's resolution on the petitioners' Motion for Leave of Court to File the Attached Demurrer to Evidence, with the attached Demurrer to Evidence, the prosecution intended to file its Comment, by serving copies thereof, through registered mail, upon counsels

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14 CA *rollo*, p. 50.
15 *Id*. at 51-57.
16 *Id*. at 24, 27.
17 *Id*. at 63-67.
18 *Id*. at 68-71.

for the petitioners, including the other accused, and the respondent; however, said Comment was not actually filed with the trial court due to oversight on the part of the staff of the State Prosecutor handling the case.[19] Claiming that it was deprived of due process, the prosecution prayed that its Comment be admitted and that the same be treated as a reconsideration of the trial court's Order dated April 25, 2008.

In an Order dated June 3, 2008, the RTC granted the prosecutions' Motion to Admit, with the attached Comment, and ruled that its Comment be admitted to form part of the court records.

On August 19, 2008, respondent filed a Petition for *Certiorari* with the CA, seeking to set aside the RTC Orders dated April 25, 2008 (which granted petitioners' Demurrer to Evidence and ordered the dismissal of the cases against them) and June 3, 2008 (which noted and admitted respondent's Comment to form part of the records of the case).

In a Decision dated May 19, 2009, the CA granted respondent's petition, thereby reversing and setting aside the RTC Order dated April 25, 2008, but only insofar as it pertains to the grant of petitioners' Demurrer to Evidence, and ordered that the case be remanded to the trial court for reception of petitioners' evidence.

Aggrieved, petitioners filed a Motion for Reconsideration dated June 7, 2009 which, however, was denied by the CA in a Resolution dated September 28, 2009.

Hence, petitioners filed this present petition, raising the following arguments:

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19 *Id.* at 66.

I.
[RESPONDENT'S] PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS IS BARRED BY THE PETITIONERS' RIGHT AGAINST DOUBLE JEOPARDY.

II.
[RESPONDENT'S] PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS DOES NOT LIE TO CORRECT ALLEGED ERRORS OF JUDGMENT COMMITTED BY THE REGIONAL TRIAL COURT.

III.
THE COURT OF APPEALS ERRED IN FINDING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING PETITONERS' DEMURRER [TO] EVIDENCE.

Petitioners allege that the Order of the RTC, dated April 25, 2008, granting the Demurrer to Evidence was tantamount to an acquittal. As such, the prosecution can no longer interpose an appeal to the CA, as it would place them in double jeopardy. Petitioners contend that respondent's petition for *certiorari* with the CA should not have prospered, because the allegations therein, in effect, assailed the trial court's judgment, not its jurisdiction. In other words, petitioners posit that the said Order was in the nature of an error of judgment rendered, which was not correctible by a petition for *certiorari* with the CA.

Petitioners aver that although the CA correctly ruled that the prosecution had not been denied due process, however, it erred in ruling that the trial court committed grave abuse of discretion in granting petitioners' Demurrer to Evidence, on the basis that the prosecution failed to prove that they acted in conspiracy with Ampoloquio, the author of the questioned articles. They added that what the prosecution proved was merely their designations as Editor and Associate Editor of the publication *Bandera*, but not the fact that they had either control over the articles to be published or actually edited the subject articles.

Respondent counters that petitioners failed to show special and important reasons to justify their invocation of the Court's power to review

under Rule 45 of the Rules of Court. She avers that the acquittal of petitioners does not preclude their further prosecution if the judgment acquitting them is void for lack of jurisdiction. Further, she points out that contrary to petitioners' contention, the principle of double jeopardy does not attach in cases where the court's judgment acquitting the accused or dismissing the case is void, either for having disregarded the State's right to due process or for having been rendered by the trial court with grave abuse of discretion amounting to lack or excess of jurisdiction, and not merely errors of judgment.

Respondent also avers that even if the prosecution was deemed to have waived its right to file a Comment on the petitioners' Motion for Leave of Court to File the Attached Demurrer to Evidence, this did not give the trial court any reason to deprive the prosecution of its right to file a Comment on the petitioners' Demurrer to Evidence itself, which was a clear violation of the due process requirement. By reason of the foregoing, respondent insists that petitioners cannot invoke violation of their right against double jeopardy.

The petition is impressed with merit.

At the onset, it should be noted that respondent took a procedural misstep, and the view she is advancing is erroneous. The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other

courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.[20] The OSG is the law office of the Government.[21]

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane*,[22] it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. The same determination was also arrived at by the Court in *Metropolitan Bank and Trust Company v. Veridiano II*.[23] In the recent case of *Bangayan, Jr. v. Bangayan*,[24] the Court again upheld this guiding principle.

Worthy of note is the case of *People v. Santiago*,[25] wherein the Court had the occasion to bring this issue to rest. The Court elucidated:

> It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.

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20 *People v. Duca*, G.R. No. 171175, October 9, 2009, 603 SCRA 159, 166.
21 *Id*. at 167, citing *Labaro v. Panay*, G.R. No. 129567, December 4, 1998, 299 SCRA 714, 720.
22 G.R. No. 152903, July 17, 2006, 495 SCRA 368, 372; 527 Phil. 691, 697 (2006)..
23 G.R. No. 118251, June 29, 2001, 360 SCRA 359, 367-368; 412 Phil. 795, 804-805 (2001).
24 *Bangayan, Jr. v. Bangayan*, G.R. Nos. 172777 and 172792, October 19, 2011, 659 SCRA 590, 597.
25 G.R. No. 80778, June 20, 1989, 174 SCRA 143; 255 Phil. 851 (1989).

> In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant.[26]

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.[27]

In the case at bar, the petition filed by the respondent before the CA essentially questioned the criminal aspect of the Order of the RTC, not the civil aspect of the case. Consequently, the petition should have been filed by the State through the OSG. Since the petition for *certiorari* filed in the CA was not at the instance of the OSG, the same should have been outrightly dismissed by the CA. Respondent lacked the personality or legal standing to question the trial court's order because it is only the Office of the Solicitor General (OSG), who can bring actions on behalf of the State in criminal proceedings, before the Supreme Court and the CA.[28] Thus, the CA should have denied the petition outright.

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[26] *People v. Santiago, supra*, at 152-153; at 861-862.

[27] *Neplum, Inc. v. Orbeso*, G.R. No. 141986, July 11, 2002, 384 SCRA 467, 481-482; 433 Phil. 844, 864 (2002).

[28] *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 195 (Citations omitted); *Heirs of Federico C. Delgado v. Gonzalez*, G.R. No. 184337, August 7, 2009, 595 SCRA 501, 524; *People v. Court of Appeals*, G.R. No. 132396, September 23, 2002, 389 SCRA 461, 475, citing *Republic v. Partisala*, L-61997, November 15, 1982, 118 SCRA 370, 373.

Moreover, not only did the CA materially err in entertaining the petition, it should be stressed that the granting of petitioners' Demurrer to Evidence already amounted to a dismissal of the case on the merits and a review of the order granting the demurrer to evidence will place the accused in double jeopardy. Consequently, the Court disagrees with the CA's ruling reversing the trial court's order dismissing the criminal cases against petitioners.

Under Section 23,[29] Rule 119 of the Rules of Court on Demurrer to Evidence, after the prosecution terminates the presentation of evidence and rests its case, the trial court may dismiss the case on the ground of insufficiency of evidence upon the filing of a Demurrer to Evidence by the accused with or without leave of court. If the accused files a Demurrer to Evidence with prior leave of court and the same is denied, he may adduce evidence in his defense. However, if the Demurrer to Evidence is filed by the accused without prior leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

Corollarily, after the prosecution rests its case, and the accused files a Demurrer to Evidence, the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the trial court finds

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[29] SEC. 23. *Demurrer to evidence.* – 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 an opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

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.

that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed. Any further prosecution of the accused after an acquittal would, thus, violate the constitutional proscription on double jeopardy.[30]

Anent the prosecution's claim of denial of due process. As correctly found by the CA, the prosecution was not denied due process. Suffice it to state that the prosecution had actively participated in the trial and already rested its case, and upon petitioners' filing of their Demurrer to Evidence, was given the opportunity to file its Comment or Opposition and, in fact, actually filed its Comment thereto, albeit belatedly. The CA emphasized that the word "may" was used in Section 23 of Rule 119 of the Revised Rules of Criminal Procedure, which states that if leave of court is granted, and the accused has filed the Demurrer to Evidence within a non-extendible period of ten (10) days from notice, the prosecution "may" oppose the Demurrer to Evidence within a similar period from its receipt. In this regard, the CA added that the filing of a Comment or Opposition by respondent is merely directory, not a mandatory or jurisdictional requirement, and that in fact the trial court may even proceed with the resolution of the petitioners' Demurrer to Evidence even without the prosecution's Comment.

One final note. Article 360 of the Revised Penal Code specifies the persons that can be held liable for libel. It provides:

> **ART. 360.** *Persons responsible*. — Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

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30 *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393, 403.

> *The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.*[31]

From the foregoing, not only is the person who published, exhibited or caused the publication or exhibition of any defamation in writing shall be responsible for the same, all other persons who participated in its publication are liable, including the editor or business manager of a daily newspaper, magazine or serial publication, who shall be equally responsible for the defamations contained therein to the same extent as if he were the author thereof. The liability which attaches to petitioners is, thus, statutory in nature.

In *Fermin v. People,*[32] therein petitioner argued that to sustain a conviction for libel under Article 360 of the Code, it is mandatory that the publisher knowingly participated in or consented to the preparation and publication of the libelous article. She also averred that she had adduced ample evidence to show that she had no hand in the preparation and publication of the offending article, nor in the review, editing, examination, and approval of the articles published in *Gossip* Tabloid. The Court struck down her erroneous theory and ruled that therein petitioner, who was not only the Publisher of *Gossip* Tabloid but also its President and Chairperson, could not escape liability by claiming lack of participation in the preparation and publication of the libelous article.

Similarly, in *Tulfo v. People,*[33] therein petitioners, who were Managing Editor, National Editor of *Remate* publication, President of Carlo Publishing House, and one who does typesetting, editing, and layout of the page, claim that they had no participation in the editing or writing of the

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31 Emphasis supplied.
32 G.R. No. 157643, March 28, 2008, 550 SCRA 132.
33 G.R. Nos. 161032 and 161176, September 16, 2008, 565 SCRA 283, 314-315.

subject articles which will hold them liable for the crime of libel and, thus, should be acquitted. In debunking this argument, the Court stressed that an editor or manager of a newspaper, who has active charge and control over the publication, is held equally liable with the author of the libelous article. This is because it is the duty of the editor or manager to know and control the contents of the paper, and interposing the defense of lack of knowledge or consent as to the contents of the articles or publication definitely will not prosper.

The rationale for the criminal culpability of those persons enumerated in Article 360 was already elucidated as early as in the case of *U.S. v. Ocampo*,[34] to wit:

> According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers.[35]

Accordingly, Article 360 would have made petitioners Bautista and Alcantara, being the Editor and Assistant Editor, respectively, of *Bandera Publishing Corporation*, answerable with Ampoloquio, for the latter's alleged defamatory writing, as if they were the authors thereof. Indeed, as aptly concluded by the court *a quo*:

> The aforestated provision is clear and unambiguous. It equally applies to an editor of a publication in which a libelous article was published and states that the editor of the same shall be responsible for the defamation in writing as if he were the author thereof. Indeed, when an alleged libelous article is published in a newspaper, such fact alone sufficient evidence to charge the editor or business manager with the guilt of its publication. This sharing of liability with the author of said article is based on the principle that editors and associate editors, by the nature of their positions, edit, control and approve the materials which are to be published in a newspaper. This means that, without their nod of approbation, any article alleged to be libelous would not be published.

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34 18 Phil. 1 (1910).

35 *Id*. at 50.

> Hence, by virtue of their position and the authority which they exercise, newspaper editors and associate editors are as much critical part in the publication of any defamatory material as the writer or author thereof.[36]

Nevertheless, petitioners could no longer be held liable in view of the procedural infirmity that the petition for *certiorari* was not undertaken by the OSG, but instead by respondent in her personal capacity. Although the conclusion of the trial court may be wrong, to reverse and set aside the Order granting the demurrer to evidence would violate petitioners' constitutionally-enshrined right against double jeopardy. Had it not been for this procedural defect, the Court could have seriously considered the arguments advanced by the respondent in seeking the reversal of the Order of the RTC.

The granting of a demurrer to evidence should, therefore, be exercised with caution, taking into consideration not only the rights of the accused, but also the right of the private offended party to be vindicated of the wrongdoing done against him, for if it is granted, the accused is acquitted and the private complainant is generally left with no more remedy. In such instances, although the decision of the court may be wrong, the accused can invoke his right against double jeopardy. Thus, judges are reminded to be more diligent and circumspect in the performance of their duties as members of the Bench, always bearing in mind that their decisions affect the lives of the accused and the individuals who come to the courts to seek redress of grievances, which decision could be possibly used by the aggrieved party as basis for the filing of the appropriate actions against them.

Perforce, the Order dated April 25, 2008 of the Regional Trial Court, Branch 212, Mandaluyong City, in Criminal Case Nos. MC02-4872 and MC02-4875, which dismissed the actions as against petitioners Lito Bautista and Jimmy Alcantara, should be reinstated.

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36 *Rollo*, p. 40.

WHEREFORE, the petition is **GRANTED.** The Decision dated May 19, 2009 and Resolution dated September 28, 2009 of the Court of Appeals, in CA-G.R. SP No. 104885, are **REVERSED AND SET ASIDE.** The portion of the Order dated April 25, 2008 of the Regional Trial Court, Branch 212, Mandaluyong City, in Criminal Case Nos. MC02-4872 and MC02-4875, which dismissed the actions as against petitioners Lito Bautista and Jimmy Alcantara, is **REINSTATED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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 were 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