

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. EDMAR CASTILLO, IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 11, TUAO, CAGAYAN AND LEONIDES “ODI” F...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it[1]. It is only when he finds that the evidence on hand absolutely fails to support a finding of probable cause that he can dismiss the case[2]. On the other hand, if a judge finds probable cause, he must not hesitate to proceed with arraignment and trial in order that justice may be served[3].

Before this Court is a Petition for Certiorari[4] filed pursuant to Rule 65 of the Revised Rules of Court assailing, for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, the Order[5] dated June 17, 2013 issued by Presiding Judge Edmar P. Castillo, Sr. of Branch 11 of the Regional Trial Court in Pata, Tuao, Cagayan ("RTC"), Second Judicial Region, in Criminal Case No. 1558-T which dismissed the case for frustrated murder which was filed against herein private respondent Leonides Fausto ("Fausto") for lack of probable cause pursuant to Section 6(a), Rule 112 of the Rules on Criminal Procedure. Likewise assailed herein is the Joint Order[6] dated May 2, 2014 issued by the same court which denied the Motion for Reconsideration filed by private complainant William N. Mamba ("Mamba").

The material and relevant facts, as culled from the record, are as follows:

On October 23, 2010, private complainant William N. Mamba, then Mayor of Tuao, Cagayan, together with other officials, were on their way to the eastern barangays of the Municipality of Tuao, Cagayan for an information campaign for the then upcoming barangay and SK elections.

On their way to the house of Ricardo Capalungan ("Capalungan"), who was a candidate in the said elections, Mamba allegedly noticed that the vehicle of an opposing candidate, who was supported by herein private respondent Fausto, was following their convoy which was also escorted by other vehicles.

Upon reaching the house of Capalungan, the group of Mamba allegedly alighted from their vehicles. At this point, Mamba narrated that he saw Fausto alight from a Sports Utility Vehicle in full battle gear with bandolier and a baby armalite. The group of Fausto then allegedly opened fire against the group of Mamba which caused the latter to scamper away for their safety. Mamba, together with his brother and two escorts, stayed behind his bullet-proof SUV-Toyota Land Cruiser. Fortunately for the group of Mamba, the timely arrival of the operatives of PNP Lakambini, Tuao, Cagayan, signalled the end of the shooting incident.

As a result thereof, Mamba initiated criminal charges against the group of Fausto on December 22, 2011. Assistant State Prosecutor Phillip dela Cruz recommended that Fausto be charged with direct assault and

frustrated murder. The Information, which was docketed as Criminal Case No. 1558-T[7] read as follows:

"That on or about the 23rd day of October 2010, in the Municipality of Tuao, Province of Cagayan, Philippines, a place within the territorial jurisdiction of this Honorable Court, the above-named accused, with the use of armed men and motor vehicle, willfully, unlawfully, and feloniously, and with intent of taking the life of Willima Mamba, attack and shoot the latter with the use of a high powered firearm having performed all the acts which would have produced the crime of murder but which did not, by reason of causes independent of the defendant's will, that is, the victim was able to hide behind his bullet-proof armored vehicle.

"CONTRARY TO LAW."

During the judicial determination of the existence of probable cause for the issuance of a warrant of arrest against Fausto, Presiding Judge Edmar P. Castillo, Sr. issued the assailed Order[8] on June 17, 2013, pertinent portions of which are cited herein as follows:

"In page 8 of the Resolution dated December 22, 2011, upon which the Information filed on June 6, 2013 was based, Asst. State Prosecutor Phillip L. dela Cruz found: 'The records show that respondent Vice-Governor Fausto opened fire on complainant and his group. Luckily, the complainant and his group were not hit as his SUV-Toyota Land Cruiser is bullet-proof. The direction of the shot and where it landed are indubitable proof that respondent Vice-Governor Fausto intended to kill complainant but his effort and intent was thwarted by the complainant's use of a bullet-proof vehicle.'

"With due respect to Asst. State Prosecutor dela Cruz, the Court do not share his findings as to the existence of probable cause for the crime charged of Frustrated Murder. The private offended party, Mayor William Mamba of Cagayan, did not incur any injury whatsoever – even a superficial one, which death may ensue as a consequence. Death on the part of the offended party not being a logical consequence of the acts attributable to the accused, the offense of Frustrated Murder could not have been committed.

"On the other hand, the private offended party admitted, and found as a fact by Asst. State Prosecutor dela Cruz, that he and his group were not hit because they were then using a 'bullet-proof' vehicle at the time they were fired at. Such being the case, even if how many bullets the accused may have fired against the private offended party, the offense of murder will never ensue as a consequence. The private offended party will always be shielded from harm by his 'bullet-proof' vehicle. Neither would a frustration or an attempt of the offense of murder would occur.

"WHEREFORE, in view of all the foregoing, the case is hereby DISMISSED pursuant to the second sentence, Section 6(a), Rule 112 of the Rules on Criminal Procedure.

"SO ORDERED."

A Motion for Reconsideration[9] was filed by Mamba on July 12, 2013 which was likewise denied in a Joint Order[10] dated May 2, 2014.

Unstirred by the foregoing disposition of the RTC, the petitioner, through the Office of the Solicitor General ("OSG") filed the instant petition with this Court assigning as lone error the following act that was purportedly committed by the RTC with grave abuse of discretion amounting to lack or excess of jurisdiction, to wit:

THE REGIONAL TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING CRIMINAL CASE NO. 1158-T ON THE GROUND THAT NO CRIME WOULD ARISE FROM THE SUBJECT INCIDENT.

The primordial issue brought before this Court for resolution is whether the court a quo exercised grave abuse of discretion tantamount to lack or excess of jurisdiction in dismissing the criminal case for frustrated murder against Fausto for lack of probable cause.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be meritorious.

We first discuss the procedural infirmities as raised by private respondent Fausto.

According to Fausto, a petition for certiorari under Rule 65 of the Rules of Court was not the proper remedy to question the Order of the RTC since it involved a final order which is one which disposes of the whole subject matter leaving nothing to be done but to enforce the same. He also asserted that appeal was then the adequate, speedy and available remedy which, however, had already been lost on account of the lapse of the reglementary period for the filing thereof.

We are not in conformity with the arguments as espoused by private respondent Fausto. In a long line of cases[11], the Supreme Court had upheld the remedy of certiorari under Rule 65 of the Rules of Court in assailing a trial court's Order which dismisses a criminal case for lack of probable cause. In the same manner, the reckoning point for the period to file the petition for certiorari is upon the receipt of the Order by the public prosecutor and not by the private prosecutor since the proper party to assail an Order of dismissal in a criminal action is the State, through the Office of the Solicitor General[12]. Hence, the remedy of petition for certiorari was properly and timely availed by the OSG herein.

Going to the substantial matters involved in the case before us, the private respondent would want to convince us that the RTC did not commit grave abuse of discretion tantamount to lack or excess of jurisdiction in issuing the questioned Order which effectively dismissed the criminal case for frustrated murder against him.

Under Section 5(a) of the Revised Rules of Criminal Procedure, a trial court judge may immediately dismiss a criminal case if the evidence on record clearly fails to establish probable cause, viz:

"Sec. 5. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information."

It must, however, be observed that the judge's power to immediately dismiss a criminal case would only be warranted when the lack of probable cause is clear. In *De Los Santos-Dio v. CA*[13], the Supreme Court illumined that a clear-cut case of lack of probable cause exists when the records readily show uncontroverted and, thus, established facts which unmistakably negate the existence of the elements of the crime charged, viz:

"While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause x x x.

"In this regard, so as not to transgress the public prosecutor's authority, it must be stressed that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged. On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional

evidence.

"In other words, once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (a) issue a warrant of arrest, if he finds probable cause; (b) immediately dismiss the case, if the evidence on record clearly fails to establish probable cause; and (c) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause".

Also, In *Ho v. People*[14], the Supreme Court summarized the pertinent rulings on the subject, as follows:

"The above rulings in *Soliven, Inting and Lim, Sr.* were reiterated in *Allado v. Diokno*, where we explained again what probable cause means. Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. Hence, the judge, before issuing a warrant of arrest, 'must satisfy himself that based on the evidence submitted, there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof.' At this stage of the criminal proceeding, the judge is not yet tasked to review in detail the evidence submitted during the preliminary investigation. It is sufficient that he personally evaluates such evidence in determining probable cause. In *Webb v. De Leon*, we stressed that the judge merely determines the probability, not the certainty, of guilt of the accused and, in doing so, he need not conduct a *de novo* hearing. He simply personally reviews the prosecutor's initial determination finding probable cause to see if it is supported by substantial evidence."

Applying the aforementioned principles in the case at hand, before the RTC judge could immediately dismiss the criminal case for frustrated murder filed against Fausto, he must first satisfy himself that, based on the evidence submitted, a clear-cut case of lack of probable cause existed as the records would readily show and that the established facts unmistakably negate the existence of the elements of the crime charged.

Private respondent Fausto was charged herein with frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code which reads:

"A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator."

A crime is frustrated when the offender has performed all the acts of execution which should result in the consummation of the crime. The offender has passed the subjective phase in the commission of the crime. Subjectively, the crime is complete. Nothing interrupted the offender while passing through the subjective phase. He did all that is necessary to consummate the crime. However, the crime was not consummated by reason of the intervention of causes independent of the will of the offender[15].

It is important to note that the principal and essential element of attempted or frustrated murder is the intent on the part of the assailant to take the life of the person attacked. Such intent must be proved in a clear and evident manner to exclude every possible doubt as to the homicidal intent of the aggressor[16]. In the present case, intent to kill the victim could be inferred from the surrounding circumstances.

It was alleged in the complaint-affidavit filed by Mamba that Fausto, in full battle gear and with a bandolier and a baby armalite, together with armed men, opened fire towards their group, who were only luckily able to seek refuge behind a bullet-proof SUV-Toyota Land Cruiser. From the acts of private respondent Fausto as claimed, it could be deciphered that he intended to kill his victim, as manifested by his alleged use of a deadly weapon in his assault. Moreover, the acts allegedly performed by Fausto preparatory to the shooting which ensured the execution of his evil plan, without risk to himself, demonstrated a clear intent to kill the occupants of the subject

vehicle. From the allegations in the complaint-affidavit, Fausto had performed all the acts of execution which should result in the consummation of the crime but which did not produce it by reason of causes independent of his will.

As may clearly be inferred from the allegations of Mamba in his complaint-affidavit, the elements constituting the crime of frustrated murder are present. It was not difficult to imagine the possibility of his group being hit by live bullets and even being killed during the open fire. Even though Mamba and his group did not sustain any injury during the ambush, it does not mean that no crime had been committed against them. The latter were just fortunate enough not to have sustained any injury on the occasion thereof.

Furthermore, as alleged in the records of the case, Fausto used a high powered gun and was even in full battle gear when he opened fire towards the group of Mamba, without any provocation on the part of the latter. Under these circumstances, we are convinced that private respondent Fausto intended to kill Mamba and his group.

With respect to the trial court's finding that there could be no crime of frustrated murder in this case since Mamba did not incur any injury, the controversial case of *People v. Borinaga*[17] declared otherwise. Considering that there existed a political rivalry between the two families, motive is present on the part of Fausto, coupled with the circumstance that it was alleged that he came in full battle gear, together with armed men and followed the group of Mamba to Capalungan's house where the shooting incident allegedly ensued.

The foregoing notwithstanding, the presence or absence of the elements of the crime of frustrated murder is evidentiary in nature and is a matter of defense, the truth of which can best be passed upon after a full-blown trial on the merits.

Veritably, when the RTC dismissed the criminal case for frustrated murder on the basis that there was no crime committed against Mamba on account of the latter's admission that he did not sustain any injury whatsoever, it acted without or in excess of its jurisdiction in supplanting the public prosecutor's findings of probable cause with his own findings of insufficiency of evidence and lack of probable cause. In dismissing Criminal Case No. 1558-T for lack of probable cause, the RTC judge had committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that there was no sufficient proof that frustrated murder or, at the very least, even an attempted one had been committed by Fausto against Mamba since the records clearly disclose the unmistakable presence of a crime.

On a final note, we would like to emphasize that, in granting this petition, we are not prejudging the criminal case or the guilt or innocence of private respondent Fausto. We are simply saying that, as a general rule, if the information is valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the public prosecutor, courts should not dismiss it for want of evidence because evidentiary matters should be presented and heard during the trial. The functions and duties of both the trial court and the public prosecutor in the proper scheme of things in our criminal justice system should be clearly understood[18].

The rights of the people from what could sometimes be an oppressive exercise of government prosecutorial powers do need to be protected when circumstances so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process. Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties[19].

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the instant petition. The Orders dated June 17, 2013 and May 2, 2014 issued by Branch 11 of the Regional Trial Court of Pata, Tuao, Cagayan dismissing Criminal Case No. 1558-T are hereby REVERSED and SET ASIDE. Let the

corresponding Warrant of Arrest be issued against herein private respondent Leonides Fausto. The case is then REMANDED to the trial court to reinstate the information against private respondent Fausto and proceed with judicious speed in hearing the case.

SO ORDERED.

[*]Paredes, and [**]Corales, JJ., concur.

[*] Acting Senior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[**] Acting Junior Member vice J. Elbinias per Office Order No. 461-14-ABR dated November 3, 2014.

[1] Mendoza v. People, G.R. No. 197293, April 21, 2014.

[2] Ibid.

[3] Ibid.

[4] Rollo, Petition for Certiorari, pp. 1-18.

[5] Ibid, Order, pp. 19-20.

[6] Ibid, pp. 21-22.

[7] Ibid, pp. 41-43.

[8] Ibid, Order, pp. 19-20.

[9] Ibid, pp. 23-24.

[10] Ibid, pp. 21-22.

[11] Mendoza v. People, G.R. No. 197293, April 21, 2014; People v. Court of Appeals and Cerbo, G.R. No. 126005 January 21, 1999; Okabe v. Gutierrez, G.R. No. 150185, May 27, 2004; Gozos v. Tac-an; G.R. No. 123191 December 17, 1998; Co v. Republic, G.R. No. 168811, November 28, 2007; delos Santos-Dio v. Court of Appeals, G.R. No. 178947, June 26, 2013; Ho v. People, 280 SCRA 365, October 9, 1997 .

[12] Villareal v. Aliga, G.R. No. 166995, January 13, 2014.

[13] G.R. Nos. 178947 and 179079, June 26, 2013.

[14] 280 SCRA 365, October 9, 1997, per Panganiban, J.

[15] People of the Philippines v. Caballero, 448 Phil. 514, 534 (2003).

[16] People v. Pagador, 409 Phil. 338, 351 (2001).

[17] G.R. No. 33463, December 18, 1930.

[18] People v. Court of Appeals and Cerbo, G.R. No. 126005 January 21, 1999.

[19] Ibid.

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