

HEIRS OF THE LATE NESTOR TRIA, PETITIONERS, VS. OFFICE OF THE PRESIDENT AND ATTY. EPIFANIA OBIAS, RESPONDENTS.

Ponente: DIMARANAN-VIDAL, J.

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DIMARANAN-VIDAL, J.:

This is a Petition for mandamus/ certiorari[1] under Rule 65 of the 1997 Rules on Civil Procedure seeking to annul, reverse and set aside the Orders dated 24 March 2004[2] and 10 June 2004[3] of the public respondent, OFFICE OF THE PRESIDENT (hereinafter public Respondent), through then Presidential Assistant, MANUEL DOMINGO, dismissing the criminal case against private respondent, ATTY. EPIFANIA OBIAS (hereinafter private Respondent).

THE FACTS

As synthesized by the OFFICE OF THE SOLICITOR GENERAL (OSG):

“On May 22, 1998, about 10:00 in the morning, private respondent met Engineer Nestor Tria, Regional Director of the Department of Public Works and Highways(DPWH), Regional Office No. V, at the Pili Airport in Camarines Sur. Engineer Tria then held private respondent by the arm and led her to a particular spot at the airport where they talked. Suddenly, a gunshot rang out. Engineer Tria slumped to the floor bleeding profusely from a gunshot wound at the back of his head eventually resulting in his death.

The National Bureau of Investigation (NBI) conducted an investigation of the incident, the result of which points to Juanito S. Ona as the gunman and Roberto G. Aclan as a cohort:As a commotion ensued, ONA was seen running down the stairway while tucking a gun on his waistline. Even before Ona could come out of the doorway, ACLAN was already outside the building, pointing a handgun at everybody-obviously to discourage any attempt of pursuit while swiftly stepping backward to where their motorcycle parked. He then fired shots at an army man who tried to chase ONA. The army man, who was then unarmed, sought cover behind a parked van. ACLAN and ONA then boarded a red motorcycle and sped away. Director TRIA died from a lone gunshot wound on his nape at the Mother Seton Hospital in Naga City the following day.

Accordingly, Atty. Alejandro R. Tenerife, Bicol Regional Director of the NBI, recommended the indictment for murder of Ona, Aclan and private respondent to the Provincial Prosecutor of Camarines Sur.

After conducting the preliminary investigation, Josefino A. Subia and Cietolindo A. Luyun, Acting Provincial Prosecutor and Assisting Provincial Prosecutor, respectively, of CAMARINES Sur, rendered a Resolution dated 2 July 1999 for the indictment of Roberto A. Aclan and Juanito S. Ona but dismissing the case against private respondent for insufficiency of evidence:

WHEREFORE, let an information for murder be filed against respondents ROBERTO “OBET” ACLAN Y GULPO and JUANITO “TOTOY” ONA Y MASALONGA, as defined and penalized under Article 248 of the Revised Penal Code. With respect to respondent ATTY. EPIFANIA “FANNY” G. OBIAS, the case against her is hereby dismissed for insufficiency of evidence.

Petitioners heirs of Nestor Tria appealed from the above resolution to the DOJ. Aclan also filed a “Petition for

Review and/ or Appeal” with the DOJ. After the submission of the parties’ respective pleadings, the DOJ issued its Resolution dated 25 January 2000 the dispositive portion of which reads:

WHEREFORE, the assailed Resolution is MODIFIED. The Acting Provincial Prosecutor and Assistant Provincial Prosecutor of Camarines Sur are hereby directed to include as accused Atty. Epifania Obias in the information for murder filed against Roberto Aclan and Juanito Ona in relation to the killing of Engineer Nestor Tria.

Private respondent and Aclan jointly filed a Motion for Reconsideration (with urgent Prayer to Suspend Filing of Amended Information) dated 14 February 2000 with the DOJ. However, the DOJ denied the same as well as Aclan’s Supplemental Motion for Reconsideration dated 15 February 2000 in its Resolution dated 17 September 2001.

Private respondent next elevated the case to the office of the President through the a Notice of Appeal dated 1 October 2001 filed with the DOJ. The Office of the President then required the parties to submit their respective pleadings and directed the DOJ to forward to it the record of this case. Accordingly, the DOJ sent a letter dated 11 January 2002 to the Office of the Provincial Prosecutor of Camarines Sur directing the latter to forward the required record to the Office of the President.

Thereafter, the Office of the President issued its Resolution dated 27 June 2003 dismissing private respondent’s appeal. Undaunted, private respondent moved for a reconsideration thereof. She also submitted her “Supplemental Pleading and Submission of Newly Discovered Evidence” dated 20 November 2003.

The Office of the President granted private respondent’s motion for reconsideration in its assailed Order dated 24 March 2004; hence, petitioners, in turn, filed with the the Office of the President their Motion for Reconsideration dated 26 April 2004. Unswayed, the Office of the President rendered its assailed Order dated 10 June 2004 denying petitioner’s motion for reconsideration.”[4]

The decretal portion of the assailed Order on 24 March 2004 reads:

“WHEREFORE, premises considered, the motion for reconsideration of respondent-appellant Atty. Epifania Obias is hereby GRANTED. The Resolutions of the DOJ dated January 25, 2000 and September 17, 2001 are hereby REVERSED and SET ASIDE. Accordingly, the case against respondent-appellant Obias is hereby dismissed for insufficiency of evidence.

SO ORDERED.”[5]

The subsequent Motion for Reconsideration filed by the Petitioners was denied per Order dated 10 June 2004 of the Public Respondent, the fallo thereof states:

“WHEREFORE, premises considered, the motion for reconsideration is hereby DENIED.

SO ORDERED.”[6]

Unsatisfied with the Orders of the public Respondent, the Petitioners come now to this Court attributing upon the public Respondent the following assigned errors:

A.

IN DECIDING THE INSTANT CASE ON THE MERITS AS IT DID IN THE ASSAILED ORDERS DATED MARCH 24, 2004 AND JUNE 10, 2004, THE OFFICE OF THE PRESIDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AS IT WENT DIRECTLY AGAINST THE LETTER AND SPIRIT OF MEMORANDUM CIRCULAR NO. 1266 DATED NOVEMBER 4, 1983 AND MEMORANDUM CIRCULAR NO. 58 DATED JUNE 30, 1993[;]

B.

IN GIVING WEIGHT AND CREDENCE TO THE ALLEGED SWORN STATEMENTS OF FELIX CALAYAG AND JENNIS NIDEA, AND IN CONSIDERING THE FINDINGS OF THE DEPARTMENT OF JUSTICE DOUBTFUL, THE OFFICE OF THE PRESIDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, CONSIDERING THAT THE SAID SWORN STATEMENTS, ASIDE FROM BEING DOUBTFUL AS TO THE EXISTENCE OF THEIR ISSUERS, CAN NOT PREVAIL OVER THE FINDINGS OF THE DEPARTMENT OF JUSTICE, WHICH PRECISELY TASKED TO DETERMINE PROBABLE CAUSE[;]

C.

THE OFFICE OF THE PRESIDENT GRABBED EVERY OPPORTUNITY TO EXONERATE PRIVATE RESPONDENT ATTY. EPIFANIA OBIAS, THEREBY SHOWING ITS PARTIALITY AND BIAS[;]

D.

THE OFFICE OF THE PRESIDENT CONSIDERED THE ALLEGED SWORN STATEMENT OF ONE CESAR RASTRULLO, WHICH IS NON-EXISTENT EVIDENCE[;]

E.

THE OFFICE OF THE PRESIDENT GRAVELY ABUSED ITS DISCRETION IN DOWNPLAYING AND TOTALLY DISREGARDING THE EXHAUSTIVE INVESTIGATION OF THE NATIONAL BUREAU OF INVESTIGATION AS WELL AS THE SWORN STATEMENT OF NBI AGENT SI (sic) MANUEL EDUARTE[;]

F.

THE OFFICE OF THE PRESIDENT GRAVELY ABUSED ITS DISCRETION IN FINDING THAT THE SILENCE AND INACTION OF PRIVATE RESPONDENT ATTY. EPIFANIA OBIAS AFTER SHE WITNESSED BEFORE HER EYES THE SHOOTING OF HER FRIEND AND CLIENT ENGR. NESTOR TRIA, ARE COMMON AND ACCEPTABLE, AS THESE SILENCE AND INACTION CAN NEVER BE COMMON AND ACCEPTABLE ESPECIALLY WITH THE NATURE OF FILIPINOS BEING WARMHEARTED AND AFFECTIONATELY SPECIALLY TO FRIENDS AND RELATIVES ALIKE[;][7]

The Petition is unimpressed with merit.

Anent the 1st issue, Petitioners principally allege that it is against the spirit and letter of Memorandum Circular Nos. 1266 and 58 when public Respondent, through the then Presidential Assistant MANUEL DOMINGO, arrogated upon itself the power to amend and/ or modify the findings of the Department of Justice (DOJ) by deciding the case on the merits instead of directing the latter to reopen/ review the case.[8]

The pertinent provision of Memorandum Circular No. 58[9] which clarified the guidelines set forth in Memorandum Circular No. 1266 provides:

xxx xxx xxx

No appeal from or petition for review of decisions/ orders/ resolution of the Secretary of Justice on preliminary investigation shall be entertained by the office of the President, except those involving offenses punishable by reclusion perpetua to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/ order/ resolution, in which case the President may order the Secretary of Justice to reopen/ review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/ order/ decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such notice.(emphasis added)

It is clear from the above-quoted provision of Memo. Cir. No.58 that the public Respondent is not mandated to refer the case to the Department of Justice in those cases mentioned therein,supra, in view of the use of the word

“may” which is not mandatory but merely directory.

If it is really the Memo's mandate for the public Respondent to refer the case to the Department of Justice for the reopening and/ or review of cases it can take cognizance of, then the permissive word “may” should not have been used as the said word is merely directory and permissive in nature.[10] Noticeable is the use of the term “shall” in said Memorandum which emphasizes the mandatory duty on the part of the public Respondent to take cognizance only of cases punishable by Reclusion Perpetua to Death.[11] Perforce, contrary to petitioners’ allegation, public Respondent acted within the scope of its authority in reviewing the case.

To further buttress their stance on the issue, Petitioners aver that private Respondent did not raise new and material issue in her appeal before the public Respondent which is a jurisdictional requirement in Memorandum Circular No.58.[12] Considering that the averment is inter-related with the rest of the other issues alleged in the Petition.[13] We shall discuss the same jointly.

It bears stressing that in order for certiorari to lie, it must be shown that the tribunal, board or officer exercising judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and that there is no appeal nor any plain, speedy and adequate remedy in the course of law for the purpose of amending or nullifying the proceeding.[14] The Supreme Court in the case of *Duevo vs. Court of Appeals*[15] enunciated the import of grave abuse of discretion in this wise:

By “grave abuse of discretion” is meant such capricious and whimsical exercise of judgment which is an equivalent to an excess, or lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

In the instant case, Petitioners are evidently praying for this court to evaluate and calibrate the evidence presented before the public Respondent and determine the appreciation of its factual finding which, definitely, is improper given the nature of the instant petition.

In the same vein, the Petitioners are praying for the determination and evaluation of weight and credence on the statements made by some witnesses of the private Respondent, including the existence of her witnesses, assessment on the deportment of the private respondent after the fact, and the correctness of the investigation undertaken by the National Bureau of Investigation (NBI) as well as the factual findings of the public Respondent which, definitely, are not within the ambit of the instant petition.

In a petition for certiorari, evidentiary matters or matters of fact raised in the court/office below are not proper grounds nor may such be ruled upon in the proceedings.[16]

In *Suyat, Jr. vs. Torres*,[17] the Supreme Court explicitly held, thus:

Certiorari will not be issued to cure errors by the trial court or quasi-judicial body in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings, and its conclusion of law.

In fine, settled is the doctrine that the sole office of writ of certiorari is the correction of errors of jurisdiction.[18] It is not a remedy to correct errors of judgment[19] which are the fundamental issues raised in the instant petition.

With the foregoing findings and conclusion, We need not belabor on the Petitioners' prayer for Mandamus.

On this point, the ruling laid down in the case of *Quelnan vs. VHF Philippines Inc.*[20] is highly relevant thus:

Mandamus will lie to compel the performance of ministerial duty, not a discretionary duty, and petitioner must show he has a well-defined, clear and certain right to grant the warrant thereof.(underscoring supplied)

In the case at bar, the Petitioners have failed to satisfactorily prove that they possess not only well-defined right but also clear and certain right in order to justify the grant of the relief sought.

WHEREFORE, premises considered and for evident lack of merit, the petition is DENIED. Accordingly, the assailed Orders of the public Respondent STAND.

SO ORDERED.

De Los Santos, (Chairman) and Lampas Peralta, JJ., concur.

[1] Rollo, p.5

[2] Rollo, pp.50-56

[3] Rollo, p.83

[4] Rollo, pp. 413-417

[5] supra

[6] supra

[7] Rollo, pp. 21-22

[8] Rollo, p. 24

[9] Rollo, p. 389

[10] Grego vs. COMELEC, 274 SCRA 481

[11] Fule vs. Court of Appeals, 162 SCRA 446

[12] Rollo,p.25

[13] supra

[14] Microsoft Corporation vs. Best Deal Computer Center Corporation,389 SCRA615

[15] 373 SCRA 11

[16] Republic vs. Express Telecommunication Co., Inc.,373 SCRA 316

[17] 441 SCRA 265

[18] Katon vs. Palanca Jr., 437 SCRA 565

[19] Ibid

[20] 433 SCRA 631

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