

DAMIAN OGBURN, NEPHERONIA OGBURN, IGNACIO TAMAYO, JR. AND ROBERT VOGEL, PETITIONERS, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 102795. August 10, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated September 24, 1991 in CA-G.R. No. 11107-CR entitled, “Damian Ogburn, et al. vs. Hon. Judge RTC-Dumaguete City, Branch 39, et al.” which affirmed the decision of the Regional Trial Court remanding to the Municipal Trial Court the case of malicious mischief against the petitioners for trial on the merits.

In July 1983, Damian Ogburn, an Australian citizen, was hired by Moises L. Sycip as Senior Prawn Consultant of the Sycip Plantation, Inc. (SPI. for short), a prawn saltfarm in Manjuyod, Negros Oriental.

Upon recommendation of Ogburn, Ahab Balbon was hired by SPI to be his understudy.

Robert Vogel, a Canadian citizen, was under contract with SPI to install water pumps. Ignacio Tamayo was his helper.

During the later part of February, Ogburn, his wife Nepheronia, Vogel, Tamayo and Ogburn’s cook, Ma. Theresa Garcia, were all billeted in the SPI guesthouse.

In the evening of February 26, 1988, after having done the day’s work. Ogburn and Vogel allegedly decided to have prawns for dinner. Ogburn allegedly took four (4) of the six giant prawns in an aquarium in the guesthouse and had them cooked for his and Vogel’s dinner.

The next morning, February 27, 1988, Santiago Askin reported to Ahab Balbon, what happened to the four (4) prawns which were allegedly the subject of Balbon’s experiment.

Based on the sworn statements executed by Balbon and Askin, a criminal complaint for qualified theft was filed on March 2, 1988, in the Second Municipal Circuit Trial Court of Manjuyod, Negros Oriental by P/Lt. Cesar Balderas, Station Commander of Manjuyod, Negros Oriental, against the Ogburns, Vogel and Tamayo. It was docketed as Criminal Case No. M-19 (88). The information charged the petitioners with having illegally taken four (4) pieces of giant prawns, grown for experimental purposes, thereby causing damage to the owner. SPI, in the sum of P400,000.00 representing the value of the prawns and the estimated loss due to the 3 to 4 years setback allegedly suffered by the prawn project.

The petitioners submitted their counter-affidavits to the investigating Judge, MCTC Judge Aurelio J.V. Lomeda.

On May 23, 1988, Judge Lomeda, after conducting a preliminary examination in the form of searching questions and answers, found probable cause to believe that the crime charged was committed by the petitioners and that there was need to place them in custody. So he issued warrants of arrest and fixed bail of P30,000.00 for each of

them.

On August 1, 1988, Judge Lomeda issued an order terminating the preliminary investigation and submitting the case for resolution.

On November 23, 1988, the Ogburns posted cash bail bonds amounting to P60,000.00 for their provisional liberty.

On October 5, 1989, or more than a year since the examination was ended with no resolution yet in sight, Ogburn and Vogel filed with the Ombudsman a complaint against Judge Lomeda and P/Lt. Cesar Baldero and Moises Sycip (alleged manager of SPI) for dereliction of duty, violation of the Anti-Graft and Corrupt Practices Act, gross incompetence and gross ignorance of the law.

Spurred to action by the petitioners' recourse to the Ombudsman, Judge Lomeda issued on October 9, 1989, a resolution finding no sufficient ground to hold them for qualified theft, but he found probable cause for malicious mischief. Nevertheless, in view of the charge filed by the petitioners against him in the Office of the Ombudsman, Judge Lomeda inhibited himself from the case. Judge Romeo Anasario was designated to take over.

On October 31, 1989, the petitioners filed a motion for reinvestigation with the Provincial Prosecutor of Negros Oriental who granted their motion and designated Assistant Provincial Fiscal Epifanio S. Betinol, to conduct it. After conducting a reinvestigation of the case, Fiscal Betinol affirmed Judge Lomeda's preliminary finding that the crime committed by the petitioners was only malicious mischief. Accordingly, he lodged an information for malicious mischief in the Municipal Trial Court, where it was docketed as Criminal Case No. M-18-90.

The petitioners filed a petition for review of Fiscal Betinol's resolution in the Department of Justice. Their petition was dismissed.

Meanwhile, in the graft case against Judge Lomeda, the Ombudsman noted that the respondents (now petitioners) and their counsel had not been present at the preliminary examination conducted by Judge Lomeda; that the issuance of the warrants of arrest against them was premature; and that excessive bail of P30,000.00 for each, instead of only P1,800.00 was fixed for their provisional liberty.

On July 20, 1990, the Ombudsman: (1) dismissed the complaint against Lt. Balderas, (2) indorsed the complaint against Judge Lomeda to the Court Administrator of the Supreme Court "for the necessary administrative investigation against Judge Lomeda pursuant to Section 21 of RA 6770." (p. 66, Rollo) and (3) recommended the filing in the Sandiganbayan of a proper information for violation of Section 3, par. (e) of RA 3019, the Anti-Graft and Corrupt Practices Act. The Ombudsman noted that:

"The aforesaid resolution [of Judge Lomeda] does not contain any finding at all nor does it contain any discussion of any of the three (3) elements of the crime of Malicious Mischief under Article 327 and penalized under Article 329 of the Revised Penal Code on the case under consideration.

"Stated clearly there is nothing in the resolution that would reasonably justify the finding on the probability of the accused having committed the crime of Malicious Mischief." (p. 62, Rollo; emphasis supplied.)

On the strength of the Ombudsman's above observation, petitioners filed on October 24, 1990, a motion to dismiss Criminal Case No. M-18-90.

On December 14, 1990, Judge Anasario granted the motion to dismiss the charge of malicious mischief against the petitioners because "the Court's conscience could not allow that this case should go on before this Court." (p. 85, Rollo.)

The court cancelled the bail bond of P60,000.00 put up by the Ogburns, allowed them to withdraw their cash bond, and recalled the warrants of arrest against Vogel and Tamayo.

The People appealed Judge Anasario's order to the Regional Trial Court, Branch 39, Dumaguete City. The court reversed Judge Anasario's resolution and ordered the remand of the record of the case to the court of origin "for trial in accordance with law."

The petitioners filed a petition for review in the Court of Appeals (CA-G.R. No. 11107). On September 24, 1991, the Court of Appeals dismissed the petition. Hence, this recourse to the Supreme Court by certiorari under Rule 45 of the Rules of Court.

The main issue here is whether or not the Court of Appeals and the Regional Trial Court erred in setting aside the resolution of MCTC Judge Romeo Anasario dismissing Criminal Case No. M-18-90 for malicious mischief based on the Ombudsman's finding that Judge Lomeda's preliminary investigation of the charge was irregular.

Although the Ombudsman found many things wrong with the way Judge Lomeda conducted his preliminary examination of the charge of qualified theft against the petitioners and although Judge Lomeda's conclusion, that the crime committed was not qualified theft but malicious mischief, was the same conclusion that Assistant Prosecutor Betinol arrived at after a reinvestigation of the case at the instance of the petitioners themselves, the Court of Appeals and the RTC correctly held that "the factual findings and conclusions of the Ombudsman, although entitled to respect, should not be allowed to take precedence over the findings of the prosecuting officers who had personally conducted the preliminary investigation. The determination of whether or not an information must be lodged with the courts lies within the exclusive realm of the prosecution, free from the influence or intervention of the courts or quasi-judicial bodies" (p. 153, Rollo). The conclusion of Prosecutor Betinol that the crime committed by the petitioners was malicious mischief was based on the evidence received by him during his own reinvestigation of the case. Hence, even if his conclusion was the same as that of Judge Lomeda it was not tainted with the errors and irregularities that infected Judge Lomeda's preliminary investigation of the case. To quote the Court of Appeals:

"x x x granting in gratia argumenti that the Ombudsman had correctly adjudged the actuations of Judge Lomeda to be out of bounds when he conducted the preliminary investigation of this case, the defect was cured when a reinvestigation was conducted by Asst. Provincial Prosecutor Betinol who found the existence of a probable cause and filed the appropriate information against the petitioners." (p. 153, Rollo.)

WHEREFORE, finding no reversible error in the decision of the Court of Appeals in CA-G.R. No. 11107, the petition for review is DENIED for lack of merit. Costs against the petitioners.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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