

MAYOR ARNULFO NATIVIDAD, PETITIONER, VS. HON. AUGUSTO N. FELIX, PRESIDING JUDGE, RTC, BRANCH 64, TARLAC, TARLAC AND HON. PROVINCIAL PROSECUTOR OF TARLAC, RESPONDENTS.*G.R. No. 111616. February 04, 1994*

Ponente: ROMERO, J.

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The threshold issue confronting us is whether or not the provincial prosecutor of Tarlac has authority to conduct a preliminary investigation of the offense allegedly committed by herein petitioner who is a Municipal Mayor.

The undisputed facts of this case are as follows:

The Philippine National Police (PNP), responding to a letter dated July 19, 1993 written by Mrs. Lourdes Aquino, wife of deceased Severino L. Aquino, requested the Tarlac Provincial Prosecutor to investigate petitioner, the Municipal Mayor of Ramos, Tarlac, for the death of Severino Aquino at the Ramos Police Station on the night of February 20, 1989. (I.S. 93-1038). Consequently, a subpoena was issued requiring petitioner to submit a counter-affidavit.

During the pendency of IS 93-1038, the PNP filed another complaint on July 26, 1993 with the Municipal Circuit Trial Court of Gerona-Ramos Tarlac (MCTC Criminal Case No. 4923). On the same day, the MCTC directed petitioner's arrest with bail fixed at P250,000.00.[1] On July 28, 1993, he forthwith posted bail with the RTC of Manila, Branch 27 which thereafter issued an order recalling warrant.[2]

After conducting the requisite preliminary investigation, the MCTC, through a resolution dated July 29, 1993 opining that there was probable cause to hold accused for murder, recommended bail at P250,000.00.[3] On the same date, the Provincial Prosecutor approved the filing of an information for murder but with no bail recommended.[4] Consequently, an information against petitioner and Sesonando "Boy" Llerina was filed before the sala of Judge Augusto Felix of Regional Trial Court of Tarlac, Tarlac, Branch 64 (Criminal Case No. 7717). Warrant of Arrest, dated July 30, 1993, was issued on August 2, 1993.

Thereafter, petitioner filed an urgent motion to withhold the issuance of the warrant of arrest and to dismiss the case. In the alternative, petitioner asked that the case be remanded for further preliminary investigation proceedings. In an order dated August 9, 1993, the trial court, observing that the Judge of the Municipal Circuit Trial Court failed to conduct the second stage of the preliminary investigation, recalled the warrant of arrest and remanded the case for further preliminary investigation.[5]

Sensing an alleged partiality on the part of the provincial prosecutor, petitioner wrote the Secretary of Justice requesting that his preliminary investigation be conducted in Manila. This request was denied subsequently on August 18, 1993.

On August 16, 1993, petitioner was ordered to file his counter-affidavit. On August 25, 1993, a resolution was issued by a panel of prosecutors holding that probable cause exists. They also attached an amended information

charging Jun Cabaong, Sesonando "Boy" Llerina and Vicente Millado[6] as additional defendants. The same day, respondent judge admitted the amended information and directed the issuance of a warrant of arrest without bail on petitioner.[7]

The next day, August 26, 1993, petitioner moved to remand his case for preliminary investigation[8] with motion to quash warrant alleging that there was no preliminary investigation and contending that respondent judge had no jurisdiction over the case because it was the Ombudsman and not the Provincial Prosecutor who had jurisdiction to conduct the preliminary investigation. Petitioner vigorously contended that the proper court which had jurisdiction over the case was the Sandiganbayan and not respondent judge.

On September 6, 1993, respondent judge denied petitioner's motion to remand and committed petitioner to the Tarlac Penal Colony where petitioner is now detained.

Hence, this petition.

The issue is whether or not the respondent judge committed grave abuse of discretion in admitting the amended information filed by the provincial fiscal and in directing petitioner's arrest. Based on Section 15 (1) of Republic Act No. 6770 (The Ombudsman Act of 1989), petitioner contends that it is the Ombudsman and not the provincial fiscal who has the authority to conduct a preliminary investigation over his case for the alleged murder of Severino Aquino. Section 15 states:

"Sec. 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases." (Underscoring ours)

Citing *Deloso v. Domingo*[9] where, in determining the power of the Ombudsman to conduct preliminary investigation, we relied principally on Sections 12 and 13, Article XI of the 1987 Constitution and Section 15 (1) of the Ombudsman Act of 1989. In the *Deloso* case, we said that the clause "any illegal act or omission of any public official,"[10] is broad enough to encompass any crime committed by a public official. We continued: "The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from, the performance of official duty. Since the law does not distinguish, neither should we." On this aforequoted pronouncement is anchored petitioner's contentions.

The *Deloso* case has already been re-examined in two cases, namely *Aguinaldo v. Domagas*[11] and *Sanchez v. Demetriou*. [12] However, by way of amplification, we feel the need for tracing the history of the legislation relative to the jurisdiction of Sandiganbayan since the Ombudsman's primary jurisdiction is dependent on the cases cognizable by the former.

In the process, we shall observe how the policy of the law, with reference to the subject matter, has been in a state of flux.

These laws, in chronological order, are the following: (a) Pres. Decree No. 1486,[13] - the first law on the Sandiganbayan; (b) Pres. Decree No. 1606[14] which expressly repealed Pres. Decree No. 1486; (c) Section 20 of Batas Pambansa Blg. 129;[15] (d) Pres. Decree No. 1860;[16] and (e) Pres. Decree No. 1861.[17]

The latest law on the Sandiganbayan, Sec. 1 of Pres. Decree No. 1861 reads as follows:

"SECTION 1. Section 4 of Presidential Decree No. 1606 is hereby amended to read as follows:

'SEC. 4. Jurisdiction. - The Sandiganbayan shall exercise:

'(a) Exclusive original jurisdiction in all cases involving:

x x x x x x x x

(2) Other offenses or felonies committed by public officers and employees in relation to their office, including those employed in government-owned or controlled corporations, whether simple or complexed with other crimes, where the penalty prescribed by law is higher than prision correccional or imprisonment for six (6) years, or a fine of P6,000: PROVIDED, HOWEVER, that offenses or felonies mentioned in this paragraph where the penalty prescribed by law does not exceed prision correccional or imprisonment for six (6) years or a fine of P6,000 shall be tried by the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court." (Underscoring provided)

A perusal of the aforecited law shows that two requirements must concur under Sec. 4 (a) (2) for an offense to fall under the Sandiganbayan's jurisdiction, namely: the offense committed by the public officer must be in relation to his office and the penalty prescribed be higher than prision correccional or imprisonment for six (6) years, or a fine of P6,000.00.

Applying the law to the case at bench, we find that although the second requirement has been met,[18] the first requirement is wanting. A review of these Presidential Decrees, except Batas Pambansa Blg. 129, would reveal that the crime committed by public officers or employees must be "in relation to their office" if it is to fall within the jurisdiction of the Sandiganbayan. This phrase which is traceable to Pres. Decree No. 1486, has been retained by Pres. Decree No. 1861 as a requirement before the Ombudsman can acquire primary jurisdiction on its power to investigate.

It cannot be denied that Pres. Decree No. 1861 is in pari materia to Article XI, Sections 12 and 13 of the 1987 Constitution and the Ombudsman Act of 1989 because, as earlier mentioned, the Ombudsman's power to investigate is dependent on the cases cognizable by the Sandiganbayan. Statutes are in pari materia when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter.[19]

It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, "interpretare et concordare legibus est optimus interpretandi," or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[20] Thus, in the application and interpretation of Article XI, Sections 12 and 13 of the 1987 Constitution and the Ombudsman Act of 1989, Pres. Decree No. 1861 must be taken into consideration. It must be assumed that when the 1987 Constitution was written, its framers had in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the 1987 Constitution and the Ombudsman Act of 1989 are deemed in accord with existing statute, specifically, Pres. Decree No. 1861.

Now we cannot accept petitioner's specious argument that the alleged offense was committed in performance of the mayor's responsibility to maintain peace and order on the pretext that the victim, a robbery and NPA suspect, was under investigation at the time when he was allegedly killed at the police station.[21] By no stretch of the imagination or logic, can we construe that the alleged act falls under any of the functions of the municipal mayor as enumerated under Sec. 444 of the Local Government Code of 1991 or implied therefrom.[22] Thus, petitioner cannot disregard the authority of the provincial prosecutor in conducting a preliminary investigation of his alleged criminal acts.

Assuming arguendo that petitioner's act satisfied the requirement that the same must be in performance of official functions, still it cannot be overlooked that the Ombudsman has only primary jurisdiction over cases cognizable by the Sandiganbayan, not exclusive original jurisdiction as specified under Section 15 (1) of Rep. Act No. 6770 aforecited. As we held in *Aguinaldo v. Domagas*[23] and recently, *Sanchez v. Demetriou*,[24] such authority of the Ombudsman "is not an exclusive authority but rather a shared or concurrent authority in respect of the offense charged," in other words, concurrent with similarly authorized agencies of the government.[25] Accordingly, the Ombudsman may take over the investigation of such case at any stage from any investigative agency of the Government.

A careful scrutiny of Sec. 15 (1) of the Ombudsman Act of 1989 will reveal that the word "may" is used in regard to the Ombudsman's assumption of its primary jurisdiction over cases cognizable by the Sandiganbayan. The word "may," being generally permissive and since it operates to confer discretion,[26] it follows that the Ombudsman's investigatory powers are but directory in nature.

Finally, petitioner contends that respondent judge committed grave abuse of discretion when he denied petitioner the opportunity to file a counter-affidavit after the latter was subpoenaed. His thesis is that the filing of the amended information was null and void because it violated his right to a preliminary investigation since it was filed before the lapse of the ten-day period for filing a counter-affidavit under Sec. 3 (b) of Rule 112 of the Rules on Criminal Procedure.

We see no denial of due process against petitioner for he has been afforded every opportunity to present his counter-affidavit. It appears from the records that the accused was duly notified to submit his counter-affidavit on August 19, 1993. However, he did not personally appear and instead filed a manifestation with motion asking for a cancellation of the August 19 hearing and requested an extension of fifteen (15) days. The fifteen-day period requested by him was denied but he was given an additional period of five (5) days. The extended period elapsed without the accused submitting his counter-affidavit. There being no counter-affidavit submitted as of August 25, 1993 by the petitioner, the prosecution filed the corresponding amended information with the trial court.[27]

WHEREFORE, the petition is DISMISSED for lack of merit. Case REMANDED to the trial court for further proceedings. SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Bellosillo, Melo, Quason, Puno, Vitug, and Kapunan, JJ., concur.

Nocon, J., on leave.

[1] Annexes "B" and "B-1," Rollo, pp. 38 and 29.

[2] Annex "C," Rollo, p. 40.

[3] Annex "F," Rollo, pp. 46-48.

[4] Annex "G," Rollo, pp. 49-50.

[5] Annex "H," Rollo, p. 54.

[6] Annex "M," Rollo, pp. 65-69.

[7] Annex "P," Rollo, pp. 74-84.

[8] It appears that petitioner failed to submit his counter-affidavit on August 19, 1993, the date set for the preliminary investigation and that, despite the denial of a 15-day extension and a 5-day additional period given,

petitioner still failed to submit his counter-affidavit.

[9] G.R. No. 90591, November 21, 1990, 191 SCRA 545.

[10] Sec. 13, Article XI of the 1987 Constitution.

[11] G.R. No. 98452, En Banc Resolution of September 26, 1991.

[12] G.R. No. 111771-77, November 9, 1993.

[13] Entitled, "Creating a Special Court to be known as 'Sandiganbayan' and other purposes." (Effective, June 11, 1978)

[14] Entitled, "Revising Presidential Decree No. 1486 Creating a Special Court to be known as 'Sandiganbayan' and for other purposes." (Effective, December 10, 1978)

[15] Sec. 20. Jurisdiction in criminal cases. - Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

[16] Amending the pertinent provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 relative to the jurisdiction of the Sandiganbayan and for other purposes. (Effective January 14, 1983)

[17] Amending the Pertinent Provisions of Presidential Decree No. 1606 and Batas Pambansa Blg. 129 relative to the jurisdiction of the Sandiganbayan and other purposes. (Effective, March 23, 1983)

[18] The murder charge against petitioner is punishable with the penalty of reclusion temporal to death, hence cognizable by the Sandiganbayan. It follows then that the Ombudsman has primary jurisdiction to investigate it. (Sec. 1 of Pres. Decree No. 1861 in relation to The Ombudsman Act of 1989, Rep. Act. No. 6770)

[19] *City of Naga v. Agna*, G.R. No. 36049, May 31, 1976, 71 SCRA 176.

[20] *Valera v. Tuason*, 80 Phil. 823 (1948).

[21] Rollo, p. 18.

[22] Republic Act No. 7160.

[23] See footnote 11.

[24] See footnote 12.

[25] *Cojuangco, Jr. v. Presidential Commission on Good Government*, G.R. No. 92319-20, October 2, 1990, 190 SCRA 241.

[26] *Bersabel v. Salvador*, G. R. No. 35910, July 21, 1978, 84 SCRA 176; *Dizon v. Encarnacion*, 119 Phil. 20 (1963); *Castillo v. Sian*, 105 Phil. 622 (1959); *Cabaluna v. Ventura*, 47 Phil. 165 (1924).

[27] Annex "N," Rollo, p. 70.

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