

REMEDIOS A. DUPASQUIER, ENRIQUE M. ZALAMEA, JR., RAMON HENARES, RODRIGO GATMAITAN, JR., JESUS CORDERO, BENJAMIN ELIZAGA AND EDUARDO TACOLOD, PETITIONERS, VS. THE HONORABLE COURT...

G.R. No. 112089. January 24, 2001

Ponente: PARDO, J.

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PARDO, J.:

These are two (2) consolidated cases assailing two (2) decisions[1] of the Court of Appeals involving the prosecution of officials of Banco Filipino Savings and Mortgage Bank, for estafa.

In the first decision, the Court of Appeals[2] dismissed the petition of Remedios A. Dupasquier, Enrique M. Zalamea, Jr., Ramon Henares, Rodrigo Gatmaitan, Jr., Jesus Cordero, Benjamin Elizaga and Eduardo Tacolod, for the dismissal of the charges against them.

In the second decision, the Court of Appeals[3] ordered petitioners Secretary of Justice, Provincial Prosecutor for Rizal, and the trial courts to dismiss the charges against respondent Fortunato M. Dizon, Jr.

In 1987, Carlota P. Valenzuela, deputy governor of the Central Bank of the Philippines and receiver/liquidator of Banco Filipino Savings and Mortgage Bank, filed with the Department of Justice a complaint for estafa against the following Banco Filipino officials in connection with irregular grants of commercial loans to corporate subsidiaries of Banco Filipino, namely: Anthony C. Aguirre, Tomas B. Aguirre, Teodoro C. Arcenas, Fortunato M. Dizon, Jr., Alberto C. Aguirre, Delfin M. Dimagiba, Napoleon L. Buencamino, Enrique M. Zalamea, Jr., Eugenio A. Osias, Ramon Henares, Benjamin E. Elizaga, Martin L. Calicutan, Eduardo V. Tacolod, Eduardo F. Quirino, Cynthia Subijano, Solita M. Manalaysay, Hautila D. Jose, Remedios Dupasquier, Nancy L. Ty and Elena Pallasique.[4]

After conducting preliminary investigation, Rizal 2[nd] Assistant Provincial Prosecutor Herminio T. Ubana, Sr. issued two (2) resolutions[5] recommending the filing of information for estafa against the above-named officials, except for Nancy L. Ty and Elena Pallasique. With the approval of the Provincial Prosecutor of Rizal, on August 8, 1988, informations[6] were thus filed against said officials with the Regional Trial Court, Makati, Branch 63.

From the resolutions of the prosecutor, some of the accused-officials moved for a reconsideration or reinvestigation alleging serious irregularities during the preliminary investigation, to wit: (a) parties not originally charged were found indictable in said resolutions and (b) of many who were not included in the resolutions were charged in the informations filed in court.

On April 10, 1989, Rizal Provincial Prosecutor Mauro M. Castro issued a resolution[7] granting a reinvestigation.

On March 21, 1991, a panel of investigators composed of 2[nd] Assistant Prosecutor Edwin Condaya, 3[rd] Assistant Prosecutor Domingo Allena and 4[th] Assistant Prosecutor Eduardo Bautista prepared a

memorandum[8] for Provincial Prosecutor Mauro M. Castro recommending the dismissal of the charges against the accused for lack of probable cause.

On July 11, 1991, respondent Provincial Prosecutor Castro issued a resolution[9] reversing the investigating panel's recommendation and ordered the prosecution of petitioners[10] and respondent Fortunato Dizon, Jr.[11]

On or about July 29, 1991, petitioners[12] filed a motion for reconsideration[13] of the July 11, 1991 resolution of Provincial Prosecutor Castro. On the other hand, on July 24, 1991, respondent Fortunato M. Dizon, Jr. with others filed with the Office of the Secretary of Justice a petition for review.[14]

On October 2, 1991, Acting Secretary of Justice Silvestre H. Bello dismissed respondent Dizon's petition for review.[15] On March 25, 1992, Secretary of Justice Eduardo G. Montenegro denied respondent Dizon's motion for reconsideration.[16]

On May 18, 1992, respondent Dizon[17] filed with the Court of Appeals a petition for certiorari, prohibition and mandamus[18] to annul the resolution[19] of Acting Secretary of Justice Eduardo G. Montenegro, and to order the dismissal of all the criminal cases against him before the Makati Regional Trial Courts.

On May 28, 1992, Provincial Prosecutor Mauro M. Castro denied the motion for reconsideration of the petitioners.[20]

On June 19, 1992, petitioners appealed to the Secretary of Justice from the resolution of respondent Provincial Prosecutor Castro.[21]

On July 13, 1992, Secretary of Justice Franklin M. Drilon dismissed the appeal of petitioners.[22] On August 24, 1992, Undersecretary Ramon S. Esguerra denied the motion for reconsideration.[23]

On September 8, 1992, petitioners[24] filed with the Court of Appeals a petition for certiorari, prohibition and mandamus.[25] They alleged that:

"1.

The respondents are acting with an uneven hand and, in fact, are acting oppressively against Remedios Dupasquier when they allow her prosecution while excluding another similarly situated.

"2.

the respondent Secretary of Justice committed an act in grave abuse of his discretion and in excess of his jurisdiction when he sustained the grave abuse of discretion of the respondent Provincial Prosecutor in substituting his judgment in place of that of the panel formed by him without first informing the petitioners of the result of the investigation.

3.

the respondents Secretary and Provincial Prosecutor acted in grave abuse of discretion amounting to an excess of jurisdiction when they continued prosecution of the petitioners despite lack of basis therefore and despite lack of damage on the part of Banco Filipino Savings & Mortgage Bank."

On June 18, 1993, the Court of Appeals promulgated a decision[26] dismissing the petition for lack of merit. On July 5, 1993, petitioners filed a motion for reconsideration.[27]

During the pendency of the motion for reconsideration,[28] on September 03, 1993, the Court of Appeals promulgated a decision[29] setting aside the resolution[30] of respondent Secretary of Justice and ordering the dismissal of the criminal cases against respondent Dizon.

Upon learning of the triumph of their co-accused respondent Dizon, Jr.,[31] on September 14, 1993,[32]petitioners filed with the Court of Appeals a supplemental motion for reconsideration and an urgent motion for the consolidation of CA-G. R. SP No. 28867 and CA-G. R. SP No. 27922. On October 1, 1993, the Court of Appeals denied the motion for reconsideration.[33]

Hence, on November 9, 1993, they filed with the Supreme Court a petition for review on certiorari[34] praying that the criminal cases against them be dismissed.

On January 10, 1994, the prosecution[35] interposed an appeal via certiorari to the Supreme Court from the decision of the Court of Appeals.[36]

On motion of petitioners,[37] on August 22, 1994, the Court resolved to consolidate the two cases.[38]

Petitioners[39] raised several interrelated issues. However, the crucial issue raised is whether the court may review findings of the prosecutor on the existence of probable cause sufficient to file the proper information in court and substitute its judgment to that of the prosecutor in determining the sufficiency of evidence to establish the guilt of petitioners for estafa.

We need only to stress that the determination of probable cause during a preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor.[40] An investigating prosecutor is under no obligation to file a criminal action where he is not convinced that he has the quantum of evidence at hand to support the averments.[41] Prosecuting officers have equally the duty not to prosecute when after investigation or reinvestigation they are convinced that the evidence adduced was not sufficient to establish a prima facie case.[42] Thus, the determination of the persons to be prosecuted rests primarily with the prosecutor who is vested with discretion in the discharge of this function.[43]

Consequently, the fact that the investigating prosecutor exonerated some of the co-accused in the preliminary investigation does not necessarily entitle petitioners to a similar exoneration where the investigating prosecutor found probable cause to prosecute them for the crime charged.

The Court finds erroneous the assailed decision of the Court of Appeals reversing the investigating prosecutor's recommendation for the prosecution of respondent Fortunato M. Dizon, Jr. Courts should give credence, in the absence of a clear showing of arbitrariness, to the findings and determination of probable cause by prosecutors in a preliminary investigation.[44] We have repeated this dictum in *People v. Cerbo*,[45] where we said that:

"In our criminal justice system, the public prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. Courts must respect the exercise of such discretion when the information filed against the accused is valid on its face, and no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor."

Finally, we note that the parties[46] are ventilating before us the merits of their respective causes or defenses. This is not the occasion for the full and exhaustive display of the parties' evidence. The presence or absence of the elements of the crime is evidentiary in nature that may be passed upon after a full-blown trial on the merits.[47]

WHEREFORE, the Court:

- (1) In G. R. No. 112089, DENIES the petition and AFFIRMS the decision of the Court of Appeals in CA-G. R. SP No. 28867; and
- (2) In G. R. No. 112737, GRANTS the petition and REVERSES the decision of the Court of Appeals in CA-G. R. SP No. 27922.

Let the two cases be REMANDED to the court of origin for further proceedings.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Ynares-Santiago, JJ., concur.

- [1] G. R. No. 112089, Rollo, pp. 329-340; G. R. No. 112737, Rollo, pp. 18-38.
- [2] In CA-G. R. SP No. 28867, promulgated on June 18, 1993, Camilon, J., ponente, Benipayo and Martin, Jr., JJ., concurring, G. R. No. 112089, Rollo, pp. 328-340.
- [3] In CA-G. R. SP No. 27922, promulgated on September 3, 1993, Gutierrez, J. (now Associate Justice, Supreme Court), ponente, Imperial and Austria-Martinez, JJ., concurring, G. R. No. 112737, Rollo, pp. 18-38.
- [4] Indorsed to the Office of the Provincial Prosecutor of Rizal for investigation and docketed as I. S. Nos. 87-3849, 87-3849-A and 87-4132.
- [5] Dated July 25, 1988; Petition, Annexes "A" & "A-1", G. R. No. 112089, Rollo, pp. 59-89.
- [6] Petition, Annexes "B", "B-1" to "B-5"; G. R. No. 112089, Rollo, pp. 90-110.
- [7] Petition, Annex "C", G. R. No. 112089, Rollo, p. 113.
- [8] Petition, Annex "D", G. R. No. 112089, Rollo, pp. 114-130.
- [9] Petition, Annex "E", G. R. No. 112089, Rollo, pp. 131-155.
- [10] Dupasquier, Zalamea, Jr., Henares, Gatmaitan, Jr., Cordero, Elizaga and Tacolod, in G. R. No. 112089.
- [11] In G. R. No. 112737.
- [12] In G. R. No. 112089.
- [13] Petition, Annex "F", G. R. No. 112089, Rollo, pp. 156-181.
- [14] CA Rollo, CA-G. R. SP No. 27922, pp. 406-470.
- [15] Petition, page 8, G. R. No. 112737. Rollo, pp. 80-119, at p. 87. Petition, Annex "B", CA Rollo, CA-G. R. SP No. 27922, p. 99.
- [16] Petition, Annex "G", G. R. No. 112089, Rollo, pp. 182-212.
- [17] Docketed as CA-G. R. SP No. 27922.
- [18] CA Rollo, CA-G. R. SP No. 27922, pp. 1-67.
- [19] Dated March 25, 1992.
- [20] Petition, Annex "H", G. R. No. 112089, Rollo, pp. 213-218.
- [21] Petition, Annex "I", G. R. No. 112089, Rollo, pp. 219-224.
- [22] Petition, Annex "J", G. R. No. 112089, Rollo, p. 225.
- [23] Petition, Annex "L", G. R. No. 112089, Rollo, p. 246.

[24] In G. R. No. 112089.

[25] Docketed as CA-G. R. SP No. 28867, Petition, Annex "N", G. R. No. 112089, Rollo, pp. 248-277.

[26] Petition, Annex "R", G. R. No. 112089, Rollo, pp. 328-340.

[27] Petition, Annex "S", G. R. No. 112089, Rollo, pp. 341-367.

[28] In CA-G. R. SP No. 28867.

[29] Opposition to Motion for Extension, Annex "1", G. R. No. 112737, Rollo, pp. 18-38.

[30] Dated March 25, 1992.

[31] In CA-G. R. SP No. 27922.

[32] Petition, Annex "T", G. R. No. 112089, Rollo, pp. 368-370.

[33] G. R. No. 112089, Rollo, p. 403.

[34] Docketed as G. R. No. 112089, Rollo, pp. 8-58.

[35] Acting Secretary of Justice Eduardo G. Montenegro and Provincial Prosecutor of Rizal Mauro M. Castro. Judges Teofilo L. Guadiz, Candido P. Villanueva, and Julio R. Logarta, all of the Regional Trial Court, Makati were erroneously impleaded as co-petitioners. Petition, G. R. No. 112737, Rollo, pp. 80-118.

[36] Ibid.

[37] In G. R. No. 112089.

[38] G. R. No. 112089 with G. R. No. 112737.

[39] As used herein, they are the petitioners in G. R. No. 112089 and respondent Fortunato M. Dizon, Jr. in G. R. No. 112737.

[40] Ledesma v. Court of Appeals, 344 Phil. 207 [1997]; People v. Navarro, 337 Phil. 122 [1997].

[41] Pono v. NLRC, 341 Phil. 615 [1997], citing People v. Pineda, 127 Phil. 150 [1967].

[42] Crespo v. Mogul, 151 SCRA 462 [1987].

[43] Pono v. NLRC, *supra*, Note 41.

[44] Pono v. NLRC, *supra*, Note 41, citing Drilon v. Court of Appeals, 327 Phil. 916 [1996].

[45] 301 SCRA 475 [1999].

[46] In G. R. Nos. 112089 and 112737.

[47] Olivarez v. Sandiganbayan, 319 Phil. 45 [1995].

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