

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. CAMILO O. MONTESA, JR., AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 19, MALOLOS, BULACAN, APOLONIO CRUZ AND BERNARDA CRUZ, R...

G.R. No. 114302. September 29, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The core issue raised in this petition for certiorari under Rule 65 of the Rules of Court is whether the respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction in dismissing Criminal Case No. 1469-M-93 immediately after the arraignment of the accused-private respondents on the basis of the resolution of the Assistant Provincial Prosecutor recommending the dismissal of the case despite the disapproval of such resolution by the Provincial Prosecutor.

This petition was filed by the private prosecutor with the conformity of the Provincial Prosecutor of Bulacan, Liberato L. Reyes. Concededly, it is defective in form. But, in view of the gravity of the error allegedly committed by the respondent Judge, we required a comment from the Office of the Solicitor General, the law office of the Government authorized by law to represent the Government in this Court and in the Court of Appeals in all criminal proceedings and to act and represent the Republic or the People of the Philippines before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.[1] We had done so in previous cases.[2]

In its Comment[3] filed on 24, October 1994, the Office of the Solicitor General adopted the petition as its own and incorporated a supplement thereto.

The private respondents' comment was filed only on 23 June 1995.

The factual and procedural antecedents which gave rise to this case are uncomplicated.

On 6 July 1993, an information was filed with the Regional Trial Court (RTC) of Bulacan charging private respondents Apolonio Cruz and Bernarda Cruz with the crime of falsification of public document, committed as follows:

[O]n or about the 10th day of January, 1991, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the ... accused, conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously prepare or cause to be prepared a document denominated as "Kasulatan ng Kaloobpala" making it appear therein that the same was executed and signed by the spouses Cenon Constantino and Sotera de la Cruz and that said persons personally appeared before Notary Public Santiago L. Lindayag and acknowledged the same to be their own free act and deed, when in truth and in fact, as said accused well knew, said document was neither executed and signed by the aforementioned Cenon Constantino and Sotera de la Cruz, nor did they ever appear before the abovenamed notary

public for the purpose of acknowledging the same as said spouses were already dead at the time of the alleged execution of said document, to the damage and prejudice of public interest.[4]

The case was docketed as Criminal Case No. 1469-M-93 in Branch 19 of the said court which is presided by the respondent Judge.

Arraignment was set on 19 October 1993.[5]

On 8 October 1993, the private respondents filed with the trial court a petition for reinvestigation[6] premised on the ground that "after the information was filed, material and relevant evidence was discovered which, if presented in a reinvestigation, will certainly alter the earlier finding of probable cause by the Office of the Provincial Prosecutor thereby avoiding a prolonged litigation which is disadvantageous to all concerned."

On 12 October 1993, the respondent Judge issued an order[7] granting the petition for reinvestigation, remanding the case to the Office of the Provincial Prosecutor for purposes of reinvestigation, and cancelling the scheduled arraignment on 19 October 1993.

At the reinvestigation conducted by Assistant Provincial Prosecutor Edsel M. Rutor, the accused presented what it considered new material and relevant evidence which consists merely of an affidavit of Feliza Constantino who declared that she was the one responsible for the preparation of the questioned public document. In his resolution of 14 December 1993,[8] Rutor recommended the dismissal of the case because:

[T]he issue is now moot with the admission by Feliza Constantino in an affidavit submitted only on November 1993, wherein she made clear that she is the one responsible for the preparation of the document subject matter of this case, ... the accused spouses have no participation in the preparation of the same.

Provincial Prosecutor Liberato Reyes disapproved the recommendation and made the following handwritten note below the signature of Rutor on the last page of the latter's resolution:

Feliza Constantino did not admit having done the falsification. As vendor she merely warrants the good title that transferred to the vendee & she assumes responsibility therefor.

Hence, the Court & not this office is in a better position to resolve the issue of whether the accused are the perpetrators of the falsification. We should present our evidence that makes out a prima facie case & let the Court decide, not this office pre-empting the prerogative of the Court.[9] (emphasis supplied)

Nonetheless, in obvious disregard of the adverse stand of the Provincial Prosecutor, Rutor submitted his resolution to the trial court.

On 22 December 1993, the respondent Judge ordered the arraignment of the private respondents. They pleaded not guilty. Forthwith, the trial court issued an order[10] dismissing Criminal Case No. 1469-M-93 on the basis of the Rutor resolution. The order reads:

Before the Court is the Resolution of the Assistant Provincial Prosecutor for the dismissal of the case, however, the Provincial Prosecutor deemed it wise to endorse to the Court the propriety of resolving the case at bar. Both accused after having been arraigned and informed of the nature and cause of the accusation charged against them with the assistance of counsel entered a plea of NOT GUILTY.

The facts of the case, in brief, showed that both accused Apolonio Cruz and Bernarda Cruz were charged with the offense of "Falsification of Public Document" as provided for under Art. 172 of the Revised Penal Code in conjunction with Art. 171 thereof. Sotera dela Cruz at the time of her death was the registered owner of a parcel of land situated at Barrio Pritil, Guiguinto, Bulacan and covered by TCT No. T-281264. Following her death on

February 1, 1989, one of the heirs of the deceased, Feliza Constantino, sold her share to accused spouses for P200,000.00 pursuant to extrajudicial settlement with sale (Kasulatan ng Pagmamana sa Labas ng Hukuman). In lieu of presenting the said document to the Register of Deeds for purposes of transfer of said property to the vendees (accused spouses Apolonio and Bernarda Cruz), however, a document denominated as "Kasulatan ng Kaloobpala" dated January 10, 1991 to which both accused affixed their signatures as well as the vendee's parents Sotera dela Cruz and Constantino Cruz despite their death long before the execution of said document, was the one presented to the Register of Deeds. Pursuant therewith, TCT No. T-281264 in the name of Sotera dela Cruz was cancelled and in lieu thereof, a new certificate of title TCT No. T-10178 was issued in favor of the accused. Conformably with the foregoing circumstances, accused spouses are charged with the offense of Falsification of Public Document.

Feliza Constantino, one of the two legitimate children of deceased Sotera dela Cruz, expressly admitted having sold her share of 1,034 square meters to accused spouses for a valuable consideration pursuant to "Kasulatan ng Pagmamana sa Labas ng Hukuman na may Bilihan", however, a certain person instead whom she did not identify, caused the execution of a document of "Kasulatan ng Kaloobpala" and used the same to effect the transfer of the property to accused spouses.

It is indubitably established that the property subject of the alleged falsification of public document was actually sold to accused spouses for a valuable consideration by one of the heirs of deceased Sotera dela Cruz pursuant to "Pagmamana sa Labas ng Hukuman"; that accused spouses are not directly involved in the preparation of said Kasulatan ng Kaloobanpala; and that the person other than the accused was instrumental in the preparation of said document and who facilitated the transfer of said property to accused spouses. The express admission by the sister of the complainant that she sold her share to accused spouses for a valuable consideration and that the latter have no hand in the alleged falsification of public document are material and of great probative value and the same should be given persuasive effect and credence in judicious assessment of the case at bar. The said admission for all legal intents and purposes exonerates both accused of the offense charged. Accordingly, there is grave doubt to hold the accused criminally liable for the offense charged in the Information. The doubt as to the liability of the accused is evident by the varied and contradictory findings of the Assistant Provincial Prosecutors. In the absence, therefore, of a clear and convincing proof to establish the guilt of the accused beyond reasonable doubt, as prayed for by the Assistant Provincial Prosecutor for the dismissal of the case and finding the motion tenable, the same be given due course.

On 5 January 1994, the private prosecutor, Atty. Edwin P. Cerezo, who received a copy of the dismissal order on 28 December 1993, filed a motion for its reconsideration.[11] He alleged therein that the Rutor resolution was not approved by the Provincial Prosecutor who, on the contrary, directed Assistant Provincial Prosecutor Rutor to proceed with the presentation of the evidence for the prosecution; and that the unapproved resolution did not invalidate or modify the information already filed, neither did it serve as basis for the court's order summarily dismissing the case. He further alleged that since the court had arraigned the accused, it should have, pursuant to the Rules, scheduled the case for pre-trial and trial.

At the hearing of the motion for reconsideration on 11 January 1994, Assistant Provincial Prosecutor Rutor vehemently opposed it on the ground that the private prosecutor has no personality to intervene in the proceedings and that the motion was a mere scrap of paper for lack of his (Rutor's) conformity. The respondent Judge forthwith denied the motion.[12]

On 12 January 1994, the Provincial Prosecutor and the private prosecutor jointly filed another motion to reconsider[13] the dismissal order of 22 December 1993. They alleged therein that:

- This Honorable Court based its Order of dismissal on the Resolution of the Asst. Public Prosecutor Edsel M. Rutor dated December 14, 1993, recommending for its dismissal;
- Said Resolution of Asst. Pros. Edsel M. Rutor was not approved by the undersigned Provincial Prosecutor as he is convinced that a prima facie case existed against the accused, instead, he directed Asst. Pros. Edsel M. Rutor to proceed with the presentation of the prosecution evidence in court;
- The determination of the existence of a prima facie case by the Office of the Provincial Prosecutor for purposes of filing information in court must be respected by this Honorable Court, and it is beyond its jurisdiction to interfere with said findings, more so when an information had already been filed in court, as in the present case;
- For another, accused were already arraigned on the crime charged in the Information dated June 18, 1993, yet this Honorable Court summarily dismissed the case solely based on the unapproved Resolution of Pros. Rutor not on the evidence as no evidence has yet been presented by the parties;
- Under the Rules, after arraignment of the accused had been made, Pre-trial and Trial will follow;

They then prayed that the order of dismissal be set aside and the case be set for pre-trial and trial.

In his order of 1 February 1994,[14] the respondent Judge denied the aforesaid motion for reconsideration for having been filed out of time as a copy of the order of dismissal was received by Assistant Provincial Prosecutor Rutor on 22 December 1993, and he declared that the motion for reconsideration earlier filed by the private prosecutor "is of no moment as [it] does not have the imprimatur of the Assistant Provincial Prosecutor and perforce does not affect the running of the prescriptive period."

Hence, this petition which was filed on 25 March 1994 by the private complainant, through the private prosecutor, with the approval of Provincial Prosecutor Liberato L. Reyes.

The petition is impressed with merit.

The rule is settled that once a criminal complaint or information is filed in court, any disposition thereof, such as its dismissal or the conviction or acquittal of the accused, rests in the sound discretion of the court. While the prosecutor retains the discretion and control of the prosecution of the case, he cannot impose his opinion on the court. The court is the best and sole judge on what to do with the case. Accordingly, a motion to dismiss the case filed by the prosecutor before or after the arraignment, or after a reinvestigation, or upon instructions of the Secretary of Justice who reviewed the records upon reinvestigation, should be addressed to the discretion of the court. The action of the court must not, however, impair the substantial rights of the accused or the right of the People to due process of law.[15]

In the instant case, the respondent Judge granted the motion for reinvestigation and directed the Office of the Provincial Prosecutor of Bulacan to conduct the reinvestigation. The former was, therefore, deemed to have deferred to the authority of the prosecution arm of the Government to consider the so-called new relevant and material evidence and determine whether the information it had filed should stand. Having done so, it behooved the respondent Judge to wait for a final resolution of the incident. In *Marcelo vs. Court of Appeals*,[16] this Court ruled:

Accordingly, we rule that the trial court in a criminal case which takes cognizance of an accused's motion for review of the resolution of the investigating prosecutor or for reinvestigation and defers the arraignment until resolution of the said motion must act on the resolution reversing the investigating prosecutor's finding or on a motion to dismiss based thereon only upon proof that such resolution is already final in that no appeal was taken thereon to the Department of Justice.

The resolution of Assistant Provincial Prosecutor Rutor recommending the dismissal of the case never became final, for it was not approved by the Provincial Prosecutor. On the contrary, the latter disapproved it. As a consequence, the final resolution with respect to the reinvestigation is that of the Provincial Prosecutor, for under Section 4, Rule 112 of the Rules of Court, no complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor. Also, under Section 1(d) of R.A. No. 5180,[17] as amended by P.D. No. 77 and P.D. No. 911:

[N]o assistant fiscal or state prosecutor may file an information or dismiss a case except with the prior authority or approval of the provincial or city fiscal or Chief State Prosecutor....

The Provincial Prosecutor's opinion that the prosecution should present its "evidence that makes out a prima facie case" clearly indicate that he was convinced that there is at the very least a reasonable ground to believe that the crime of falsification was committed and the private respondents are probably guilty thereof. The findings and conclusion of the Provincial Prosecutor, being the final disposition on the reinvestigation, should have been the sole and only valid basis for the respondent Judge's final action with respect to the reinvestigation in the light of the foregoing provisions of the Rules of Court and R.A. No. 5180, as amended, and the ruling in Marcelo. The respondent Judge must have miscomprehended or misunderstood the notation of the Provincial Prosecutor that "the court & not this office is in a better position to resolve the issue of whether the accused are the perpetrators of the falsification" as a carte blanche to act on the resolution and recommendation of Rutor. He closed his eyes to the Provincial Prosecutor's stand that the prosecution should present its evidence "that makes out a prima facie case and let the court decide," which simply means that the case should not be dismissed on the basis of Rutor's recommendation.

The Rutor resolution was rendered valueless because of the Provincial Prosecutor's disapproval thereof. In submitting it nonetheless to the court and moving for the dismissal of the case, Rutor showed outright disregard of the aforementioned provisions and ruling. So did the respondent Judge when he dismissed the case on the basis of that resolution. Their disregard of the said provisions and ruling is condemnable, for it carries with it a whimsical and capricious bent that taints the exercise of discretion with grave abuse, thereby rendering the whole act infirmed and void.

Since the Provincial Prosecutor, to which the respondent Judge had deferred the matter of reinvestigation, had finally resolved to stand on the information and to present evidence to prove the guilt of the private respondents for the crime charged, the respondent Judge did not have the option to dismiss the case on the basis of the disapproved resolution of Rutor. His only option was to proceed with the arraignment of the accused and, thereafter, conduct a pre-trial and trial on the merits should they enter a plea of not guilty.

It must be observed that, although the respondent Judge was convinced of Rutor's recommendation to dismiss the case on the ground of want of probable cause because of the "admission" of Feliza Constantino that the accused spouses had no participation in the preparation of the questioned document, he still ordered the arraignment of the private respondents. He seemed to have something in mind for the protection of the interest of the private respondents. Presumably, he thought that the arraignment which was immediately followed by the dismissal of the case would forever foreclose, on the ground of double jeopardy, any reopening of the case.

For having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction thereby depriving the State of due process of law or a fair opportunity to present its evidence and prove its case, the challenged order of the respondent Judge dismissing Criminal Case No. 1469-M-93 is null and void.[18] We thus set it aside and order the reinstatement of the information.

A few words are in order before we write finis to this case.

This Court wonders why Assistant Provincial Prosecutor Edsel M. Rutor disregarded the disapproval by his superior, Provincial Prosecutor Liberato Reyes, of his resolution recommending the dismissal of Criminal Case No. 1469-M-93. Additionally, he vigorously objected to the private prosecutor's motion to reconsider the dismissal. Something is wrong somewhere. The attention of the Department of Justice must be called.

As stated in the beginning, the instant petition is defective in that it was initiated for the People by the private prosecutor. The "conformity" given by the Provincial Prosecutor did not make it any less defective. This is an opportune time to remind litigants that in cases of this nature, the Office of the Solicitor General must be consulted and its assistance solicited. Prosecutors must not simply give conformity to privately initiated petitions; they should also report the matter to the Office of the Solicitor General for appropriate action.

WHEREFORE, the instant petition is GRANTED. The challenged orders of the respondent Judge of 22 December 1993 dismissing Criminal Case No. 1469-M-93 and of 1 February 1994 denying the motion for reconsideration jointly filed by the Provincial Prosecutor and the private prosecutor are hereby SET ASIDE for being null and void, and the trial court is hereby directed to continue with the proceedings therein with purposeful dispatch.

Let a copy of this Decision be furnished the Secretary of the Department of Justice for him to take such appropriate action as may be necessary against Assistant Provincial Prosecutor Edsel M. Rutor.

SO ORDERED.

Padilla, (Chairman), Bellosillo, and Kapunan, JJ., concur.
Hermosisima, Jr., J., on official leave.

[1] Section 35, Chapter 12, Title III, Book IV, Administrative Code of 1987 (E.O. No. 292).

[2] Republic vs. Partisala, 118 SCRA 370 [1982]; City Fiscal of Tacloban vs. Espina, 166 SCRA 614 [1988]; People vs. Dacudao, 170 SCRA 489 [1989]; People vs. Calo, 186 SCRA 620 [1990]; People vs. Nano, 205 SCRA 155 [1992].

[3] Rollo, 47-65.

[4] Annex "B" of Petition; Rollo, 9-10.

[5] Petition, 2; Id., 3.

[6] Annex "C" of Petition; Id., 11.

[7] Annex "D," Id.; Id., 12.

[8] Annex "E" of Petition; Rollo, 13-16.

[9] Id., 16.

[10] Annex "F" of Petition; Rollo, 17-18.

[11] Annex "G" of Petition; Rollo, 20-21.

[12] Rollo, 5.

[13] Annex "H" of Petition; Id., 23-24.

[14] Annex "J" of Petition; Rollo, 26.

[15] Crespo vs. Mogul, 151 SCRA 462 [1989].

[16] 235 SCRA 39, 50 [1994].

[17] An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and Their Assistants and by State Attorneys or Their Assistants.

[18] See Gorion vs. Regional Trial Court, 213 SCRA 138 [1992].

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