

**LEONILA GARCIA-RUEDA, PETITIONER, VS. WILFREDO L. PASCASIO,
RAUL R. ARNAU, ABELARDO L. APORTADERA JR., HONORABLE
CONDRADO M. VASQUEZ, ALL OF THE OFFICE OF THE OMBUDSMAN;
JESUS F...**

G.R. No. 118141. September 05, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

May this Court review the findings of the Office of the Ombudsman? The general rule has been enunciated in *Ocampo v. Ombudsman* [1] which states:

In the exercise of its investigative power, this Court has consistently held that courts will not interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form and substance or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation of the complaint if, in his view, it is in due and proper form.”

Does the instant case warrant a departure from the foregoing general rule? When a patient dies soon after surgery under circumstances which indicate that the attending surgeon and anaesthesiologist may have been guilty of negligence but upon their being charged, a series of nine prosecutors toss the responsibility of conducting a preliminary investigation to each other with contradictory recommendations, “ping-pong” style, perhaps the distraught widow is not to be blamed if she finally decides to accuse the City Prosecutors at the end of the line for partiality under the Anti-Graft and Corrupt Practices Act. Nor may she be entirely faulted for finally filing a petition before this Court against the Ombudsman for grave abuse of discretion in dismissing her complaint against said City Prosecutors on the ground of lack of evidence. Much as we sympathize with the bereaved widow, however, this Court is of the opinion that the general rule still finds application in instant case. In other words, the respondent Ombudsman did not commit grave abuse of discretion in deciding against filing the necessary information against public respondents of the Office of the City Prosecutor.

The following facts are borne out by the records.

Florencio V. Rueda, husband of petitioner Leonila Garcia-Rueda, underwent surgical operation at the UST hospital for the removal of a stone blocking his ureter. He was attended by Dr. Domingo Antonio, Jr. who was the surgeon, while Dr. Erlinda Balatbat-Reyes was the anaesthesiologist. Six hours after the surgery, however, Florencio died of complications of “unknown cause,” according to officials of the UST Hospital.[2]

Not satisfied with the findings of the hospital, petitioner requested the National Bureau of Investigation (NBI) to conduct an autopsy on her husband’s body. Consequently, the NBI ruled that Florencio’s death was due to lack of care by the attending physician in administering anaesthesia. Pursuant to its findings, the NBI recommended that Dr. Domingo Antonio and Dr. Erlinda Balatbat-Reyes be charged for Homicide through Reckless Imprudence before the Office of the City Prosecutor.

During the preliminary investigation, what transpired was a confounding series of events which we shall try to disentangle. The case was initially assigned to Prosecutor Antonio M. Israel, who had to inhibit himself because he was related to the counsel of one of the doctors. As a result, the case was re-raffled to Prosecutor Norberto G. Leono who was, however, disqualified on motion of the petitioner since he disregarded prevailing laws and jurisprudence regarding preliminary investigation. The case was then referred to Prosecutor Ramon O. Carisma, who issued a resolution recommending that only Dr. Reyes be held criminally liable and that the complaint against Dr. Antonio be dismissed.

The case took another perplexing turn when Assistant City Prosecutor Josefina Santos Sioson, in the “interest of justice and peace of mind of the parties,” recommended that the case be re-raffled on the ground that Prosecutor Carisma was partial to the petitioner. Thus, the case was transferred to Prosecutor Leoncia R. Dimagiba, where a volte face occurred again with the endorsement that the complaint against Dr. Reyes be dismissed and instead, a corresponding information be filed against Dr. Antonio. Petitioner filed a motion for reconsideration, questioning the findings of Prosecutor Dimagiba.

Pending the resolution of petitioner’s motion for reconsideration regarding Prosecutor Dimagiba’s resolution, the investigative “pingpong” continued when the case was again assigned to another prosecutor, Eudoxia T. Gualberto, who recommended that Dr. Reyes be included in the criminal information of Homicide through Reckless Imprudence. While the recommendation of Prosecutor Gualberto was pending, the case was transferred to Senior State Prosecutor Gregorio A. Arizala, who resolved to exonerate Dr. Reyes from any wrongdoing, a resolution which was approved by both City Prosecutor Porfirio G. Macaraeg and City Prosecutor Jesus F. Guerrero.

Aggrieved, petitioner filed graft charges specifically for violation of Section 3(e) of Republic Act No. 3019 [3] against Prosecutors Guerrero, Macaraeg, and Arizala for manifest partiality in favor of Dr. Reyes before the Office of the Ombudsman. However, on July 11, 1994, the Ombudsman issued the assailed resolution dismissing the complaint for lack of evidence.

In fine, petitioner assails the exercise of the discretionary power of the Ombudsman to review the recommendations of the government prosecutors and to approve and disapprove the same. Petitioner faults the Ombudsman for, allegedly in grave abuse of discretion, refusing to find that there exists probable cause to hold public respondent City Prosecutors liable for violation of Section 3(e) of R.A. No. 3019.

Preliminarily, the powers and functions of the Ombudsman have generally been categorized into the following: investigatory powers, prosecutory power, public assistance function, authority to inquire and obtain information, and function to adopt, institute and implement preventive measures. [4]

As protector of the people, the Office of the Ombudsman has the power, function and duty “to act promptly on complaints filed in any form or manner against public officials” and “to investigate any act or omission of any public official when such act or omission appears to be illegal, unjust, improper or inefficient.” [5]

While the Ombudsman has the full discretion to determine whether or not a criminal case should be filed, this Court is not precluded from reviewing the Ombudsman’s action when there is an abuse of discretion, in which case Rule 65 of the Rules of Court may exceptionally be invoked pursuant to Section I, Article VIII of the 1987 Constitution. [6]

In this regard, “grave abuse of discretion” has been defined as “where a power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law. [7]

From a procedural standpoint, it is certainly odd why the successive transfers from one prosecutor to another were not sufficiently explained in the Resolution of the Ombudsman. Being the proper investigating authority with respect to misfeasance, non-feasance and malfeasance of public officials, the Ombudsman should have been more vigilant and assiduous in determining the reasons behind the “buckpassing” to ensure that no irregularity took place.

Whether such transfers were due to any outside pressure or ulterior motive is a matter of evidence. One would have expected the Ombudsman, however, to inquire into what could hardly qualify as “standard operating procedure,” given the surrounding circumstances of the case.

While it is true that a preliminary investigation is essentially inquisitorial, and is often the only means to discover who may be charged with a crime, its function is merely to determine the existence of probable cause. [8] Probable cause has been defined as “the existence of such fact and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecution, that the person charged was guilty of the crime for which he was prosecuted.”[9]

“Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.” The term does not mean actual and positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[10]

In the instant case, no less than the NBI pronounced after conducting an autopsy that there was indeed negligence on the part of the attending physicians in administering the anaesthesia. [11] The fact of want of competence or diligence is evidentiary in nature, the veracity of which can best be passed upon after a full-blown trial for it is virtually impossible to ascertain the merits of a medical negligence case without extensive investigation, research, evaluation and consultations with medical experts. Clearly, the City Prosecutors are not in a competent position to pass judgment on such a technical matter, especially when there are conflicting evidence and findings. The bases of a party’s accusation and defenses are better ventilated at the trial proper than at the preliminary investigation.

A word on medical malpractice or negligence cases.

In its simplest terms, the type of lawsuit which has been called medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional which has caused bodily harm.

In order to successfully pursue such a claim, a patient must prove that a health care provider, in most cases a physician, either failed to do something which a reasonably prudent health care provider would have done, or that he or she did something that a reasonably prudent provider would not have done; and that that failure or action caused injury to the patient.”[12]

Hence, there are four elements involved in medical negligence cases: duty, breach, injury and proximate causation.

Evidently, when the victim employed the services of Dr. Antonio and Dr. Reyes, a physician-patient relationship was created. In accepting the case, Dr. Antonio and Dr. Reyes in effect represented that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, they will employ such training, care and skill in the treatment of their patients.[13] They have a duty to use at least the same level of care

that any other reasonably competent doctor would use to treat a condition under the same circumstances. The breach of these professional duties of skill and care, or their improper performance, by a physician surgeon whereby the patient is injured in body or in health, constitutes actionable malpractice.[14] Consequently, in the event that any injury results to the patient from want of due care or skill during the operation, the surgeons may be held answerable in damages for negligence.[15]

Moreover, in malpractice or negligence cases involving the administration of anaesthesia, the necessity of expert testimony and the availability of the charge of *res ipsa loquitur* to the plaintiff, have been applied in actions against anaesthesiologists to hold the defendant liable for the death or injury of a patient under excessive or improper anaesthesia.[16] Essentially, it requires two-pronged evidence: evidence as to the recognized standards of the medical community in the particular kind of case, and a showing that the physician in question negligently departed from this standard in his treatment.[17]

Another element in medical negligence cases is causation which is divided into two inquiries: whether the doctor's actions in fact caused the harm to the patient and whether these were the proximate cause of the patient's injury.[18] Indeed here, a causal connection is discernible from the occurrence of the victim's death after the negligent act of the anaesthesiologist in administering the anesthesia, a fact which, if confirmed, should warrant the filing of the appropriate criminal case. To be sure, the allegation of negligence is not entirely baseless. Moreover, the NBI deduced that the attending surgeons did not conduct the necessary interview of the patient prior to the operation. It appears that the cause of the death of the victim could have been averted had the proper drug been applied to cope with the symptoms of malignant hyperthermia. Also, we cannot ignore the fact that an antidote was readily available to counteract whatever deleterious effect the anaesthesia might produce. [19] Why these precautionary measures were disregarded must be sufficiently explained.

The City Prosecutors were charged with violating Section 3(e) of the Anti-Graft and Corrupt Practices Act which requires the following facts:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross, inexcusable negligence; and
4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage or preference to such parties.” [20]

Why did the complainant, petitioner in instant case, elect to charge respondents under the above law?

While a party who feels himself aggrieved is at liberty to choose the appropriate “weapon from the armory,” it is with no little surprise that this Court views the choice made by the complainant widow.

To our mind, the better and more logical remedy under the circumstances would have been to appeal the resolution of the City Prosecutors dismissing the criminal complaint to the Secretary of Justice under the Department of Justice's Order No. 223, [21] otherwise known as the “1993 Revised Rules on Appeals From Resolutions In Preliminary Investigations/Reinvestigations,” as amended by Department Order No. 359, Section 1 of which provides:

Section 1. What May Be Appealed. - Only resolutions of the Chief State Prosecutor/Regional State Prosecutor/Provincial or City Prosecutor dismissing a criminal complaint may be the subject of an appeal to the Secretary of Justice except as otherwise provided in Section 4 hereof.”

What action may the Secretary of Justice take on the appeal? Section 9 of Order No. 223 states: "The Secretary of Justice may reverse, affirm or modify the appealed resolution." On the other hand, "He may motu proprio or on motion of the appellee, dismiss outright the appeal on specified grounds." [22]

In exercising his discretion under the circumstances, the Ombudsman acted within his power and authority in dismissing the complaint against the Prosecutors and this Court will not interfere with the same.

WHEREFORE, in view of the foregoing, the instant petition is DISMISSED, without prejudice to the filing of an appeal by the petitioner with the Secretary of Justice assailing the dismissal of her criminal complaint by the respondent City Prosecutors. No costs.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] 225 SCRA 725 (1993).

[2] Rollo, p. 186.

[3] Sec. 3(e). Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[4] Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez, 240 SCRA 502 (1995).

[5] Deloso v. Domingo, 191 SCRA 54 (1990).

[6] Yabut v. Office of the Ombudsman, 233 SCRA 310 (1994); Young v. Office of the Ombudsman, 228 SCRA 718 (1993).

[7] Commission on Internal Revenue v. Court of Appeals, 257 SCRA 200 (1996).

[8] Pangandaman v. Casar, 159 SCRA 599 (1988).

[9] Cruz v. People, 233 SCRA 439 (1994).

[10] Pilapil v. Sandiganbayan, 221 SCRA 349 (1993).

[11] Rollo, p. 187.

[12] Internet - <http://www.medicalmal.com/neglig.html>.

[13] Hirschberg v. State, 91 Misc 2d 590 (1977).

[14] Hoover v. Williamson, 236 Md 250.

[15] Gore v. Board of Medical Quality, 110 Cal App 3d 184 (1980).

[16] 61 Am Jur 2nd (1972).

[17] Davis v. Virginian R. Co, 361 US 354.

[18] Internet, supra; see footnote 12.

[19] NBI Disposition Form, pp. 238-254.

[20] Villanueva v. Sandiganbayan, 223 SCRA 543 (1993).

[21] Order No. 223 took effect on August 1, 1993.

[22] SECTION 9. Disposition of Appeal. - The Secretary of Justice may reverse, affirm or modify the appealed resolution. He may, motu proprio or on motion of the appellee, dismiss outright the appeal on any of the following grounds:

- a) That the offense has prescribed;
- b) That there is no showing of any reversible error;
- c) That the procedure or requirements herein prescribed have not been complied with;
- d) That the appealed resolution is interlocutory in nature, except when it suspends the proceedings based on the alleged existence of a prejudicial question; or
- e) That other legal or factual grounds exist to warrant a dismissal.

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