

MAYOR LUIS MONDIA, JR., ROBINSON GALANZA, RUFINO MONDIA, MANNY MONDIA, JR., NORBERTO ESPAÑOLA, RODRIGO MONDIA, JR., SAMSON MONDIA, JOEL TREYES AND PAT. ERNESTO ENESERIO, JR., PE...

G.R. No. 132977. November 29, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a special civil action for certiorari and mandamus seeking to annul two Orders of the Office of the Deputy Ombudsman for the Visayas in OMB-VIS-CRIM-93-0253, dated October 8, 1997[1] and January 8, 1998,[2] and to order the Office of the Ombudsman to conduct a reinvestigation and/or clarificatory questions in Criminal Cases Nos. 1112 and 1116.

On February 12, 1993, Corazon Odelmo filed a criminal complaint against petitioners, Mayor Luis Mondia, Jr. of Pulpupandan, Negros Occidental, Robinson Galanza, Rufino Mondia, Manny Mondia, Jr., Norberto Española, Rodrigo Mondia, Jr., Samson Mondia, Joel Treyes and Pat. Ernesto Eneserio, Jr., among others, with the Office of the Deputy Ombudsman (Visayas), docketed as OMB-VIS-CRIM-93-0253, for the killing of her husband, Dionisio Odelmo, and father-in-law, Jose Odelmo, on December 31, 1992.

After preliminary investigation, the Deputy Ombudsman, on January 17, 1994, filed two Informations for Murder against petitioners with the Regional Trial Court of Bago City, Negros Occidental, Branch 62, which were docketed as Criminal Cases Nos. 1112 and 1116. Presiding Judge Marietta Hobilla-Alinio, in due course, issued warrants for the arrest of petitioners.

Petitioners filed a motion to recall the warrants of arrest and a motion to quash the Informations, on the ground that they were not furnished a copy of the Resolution of the Ombudsman dated December 14, 1993. Judge Alinio issued an Order on January 26, 1994 holding in abeyance the execution of the warrants of arrest and quashing the Informations.

The Ombudsman filed a motion for reconsideration, but this was denied by Judge Alinio. Hence, the Ombudsman filed a petition for certiorari with this Court, entitled "Hon. Conrado M. Vasquez, Petitioner versus Hon. Marietta Hobilla-Alinio, et al., Respondents," docketed as G.R. Nos. 118813-14. On April 8, 1997, we rendered a Decision, the dispositive portion of which states:

WHEREFORE, the petition is GRANTED. The order of Respondent Judge Marietta Hobilla-Alinio dated 26 January 1994 insofar as it quashed the Informations as well as the order of 14 July 1994 denying reconsideration thereof is SET ASIDE. Respondent Judge having in the meantime died, any other Judge replacing her or to whom these cases may be reassigned is directed to remand the cases to the Office of the Ombudsman for completion of the proceedings by furnishing copy of the questioned orders to private respondents and thereafter resolving with dispatch whatever incidents may ensue thereunder, the result of which shall then be immediately indorsed to the RTC-Br. 62, Bago City, or any other branch to which the

cases may be reassigned, for appropriate action.[3]

Instead of moving for the reconsideration of the Ombudsman's finding of probable cause, petitioners filed on April 30, 1997 a "Motion to Set Hearing for Clarificatory Question,"[4] stating that inasmuch as the complaining witness, Corazon J. Odelmo, executed three conflicting affidavits, there is a need for clarificatory questions.

The aforesaid Motion was followed by a "Manifestation with Motion to Conduct Clarificatory Questions,"[5] filed on June 5, 1997, wherein petitioners reiterated their earlier prayer that clarificatory questions be propounded on complainant and her witnesses.

Meanwhile, on July 18, 1997, the Office of the Deputy Ombudsman for the Visayas wrote a letter to the Office of the Provincial Prosecutor of Negros Occidental, forwarding for appropriate action the "Manifestation with Motion to Conduct Clarificatory Questions" filed by petitioners, and requesting information of the results of the reinvestigation.[6]

Subsequently, it appears that the Office of the Special Prosecutor/Ombudsman, Manila, filed in Criminal Cases Nos. 1112 and 1116 an Ex-Parte Omnibus Motion praying for the issuance of a warrant of arrest without bail against petitioners, and that the cases be set for trial as soon as possible. On October 1, 1997, the Office of the Deputy Ombudsman for the Visayas wrote another letter to the Provincial Prosecutor, revoking and withdrawing its earlier directive to conduct a re-investigation and/or clarificatory questions in the said criminal cases.[7]

On October 8, 1997, the Deputy Ombudsman issued the first assailed Order denying the motions to conduct a clarificatory hearing.

Petitioners filed a Motion for Reconsideration[8] and a Supplement to Motion for Reconsideration.[9] On January 8, 1998, the Deputy Ombudsman issued the second assailed Order denying the Motion for Reconsideration, it being actually a second motion for reconsideration of the resolution dated August 10, 1993.

Hence, this petition for certiorari and mandamus alleging that public respondent Ombudsman acted with grave abuse of discretion or in excess of jurisdiction in refusing to conduct a reinvestigation and/or clarificatory questioning in the light of the decision in G.R. Nos. 118813-14.

The Office of the Solicitor General filed a Comment on behalf of the respondent Ombudsman on November 23, 1998.[10] On March 3, 1999, the Office of the Chief Legal Counsel, Office of the Ombudsman, filed its own Comment.[11] Petitioners have filed separate Replies to the two Comments.[12]

In the meantime, the Regional Trial Court of Bago City, Branch 62, issued on March 3, 1999 an Order suspending and holding in abeyance the proceedings in Criminal Cases Nos. 1112 and 1116 pending the resolution by the Ombudsman of the motion for reconsideration of the January 5, 1999 Resolution, and pending this Court's ruling in the instant petition.[13]

On August 1, 2000, petitioner filed a "Manifestation and Motion", stating that complainant Corazon J. Odelmo executed an affidavit on February 11, 2000, stating in sum that she did not recognize the persons who killed her husband and father-in-law on December 31, 1992 as their faces were covered, and that she had no more desire to further prosecute the case against Mondia, Galanza and the others. On this basis, petitioners prayed that the Office of the Ombudsman be directed to immediately conduct the reinvestigation and/or clarificatory questions in Criminal Cases Nos. 1112 and 1116 or, in the alternative, to dismiss the Informations in those cases. Attached to the "Manifestation and Motion" is an uncertified photocopy of Corazon Odelmo's affidavit.

On August 9, 2000, Corazon Odelmo filed a Manifestation, stating that she cannot in conscience prosecute petitioners for the death of her husband and father-in-law because she knows that they had nothing to do with it,

and she prays that this Court order the Ombudsman to dismiss Criminal Cases Nos. 1112 and 1116. The Manifestation, however, was neither sworn nor verified.

On September 1, 2000, petitioners filed a "Motion for Issuance of Temporary Restraining Order/Preliminary Injunction," praying that respondent judge of the Regional Trial Court of Bago City, Branch 62, be enjoined from further proceeding with Criminal Cases Nos. 1112 and 1116.

In a Resolution dated September 25, 2000, we ordered the issuance of the temporary restraining order upon filing of bond, and noted the aforesaid manifestations of petitioners and Corazon Odelmo.[14] Upon filing by petitioners of the requisite bond, a temporary restraining order was issued on September 27, 2000 enjoining the presiding judge of the Regional Trial Court of Bago City, Branch 62, from proceeding with Criminal Cases Nos. 1112 and 1116.[15]

On October 17, 2000, petitioners filed a "Motion to Dismiss Criminal Cases Nos. 1112 and 1116," on the ground the said cases have remained pending for almost eight years due to the Ombudsman's continued refusal to complete the preliminary investigation. Attached to the Motion were the affidavits of Corazon Odelmo and her children, Arnel, Arlan and Pinky, all surnamed Odelmo, stating that petitioners have nothing to do with the killing of Dionisio and Jose Odelmo, and that they have no objection to the dismissal of the said cases. This was followed on October 18, 2000 by a "Manifestation" filed by Arnel, Arlan and Pinky Odelmo, to the same effect.

Our directive in G.R. Nos. 118813-14 to the Office of the Ombudsman is clear --- to complete the proceedings therein, which means the preliminary investigation of the cases. It has been held that the right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.[16]

In the case at bar, we find that the Deputy Ombudsman for the Visayas committed grave abuse of discretion when, on October 1, 1997, he revoked his earlier directive to the Provincial Prosecutor of Negros Occidental to conduct a re-investigation and/or clarificatory questions in the criminal cases against petitioners. The propounding of clarificatory questions is an important component of a preliminary investigation, moreso in this case where it was requested by the petitioners in order to shed light on the affidavits of desistance purportedly executed by the private complainant. In this connection, the Rules of Procedure of the Office of the Ombudsman provides:

Sec. 4. Procedure. --- The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

xxx xxx xxx.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. xxx.[17]

In view of the foregoing, the Deputy Ombudsman is directed to conduct a clarificatory hearing at which the voluntariness and due execution of the affidavits of desistance of the Odelmo family may be determined. After the clarificatory hearing, the Deputy Ombudsman is directed to complete the preliminary investigation of the case, pursuant to our directive in G.R. Nos. 118813-14.

ACCORDINGLY, the petition is GRANTED. The assailed Orders of October 8, 1997 and January 8, 1998 are

ANNULLED and SET ASIDE. The Deputy Ombudsman for Visayas is DIRECTED to conduct a clarificatory hearing in Criminal Cases Nos. 1112 and 1116 (OMB-VIS-CRIM-93-0253), and thereafter, to submit to the Regional Trial Court of Bago City his Resolution thereon, for proper disposition by the said court. The "Motion to Dismiss Criminal Cases Nos. 1112 and 1116," filed by petitioners, is DENIED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Petition, Annex "J"; Rollo, p. 130.

[2] Petition, Annex "K"; Rollo, p. 131.

[3] Emphasis ours.

[4] Petition, Annex "D"; Rollo, pp. 67-69.

[5] Petition, Annex "E", Rollo, pp. 70-74.

[6] Petition, Annex "F"; Rollo, p. 75.

[7] Petition, Annex "K"; Rollo, pp. 76.

[8] Petition, Annex "H"; Rollo, pp. 77-87.

[9] Petition, Annex "I"; Rollo, pp. 88-129.

[10] Rollo, pp. 173-185.

[11] Rollo, pp. 259-267.

[12] Rollo, pp. 190-221; pp. 268-282.

[13] Rollo, pp. 287-289.

[14] Rollo, pp. 385-387.

[15] Rollo, pp. 403-404.

[16] *Duterte v. Sandiganbayan*, 289 SCRA 721, 738 (1998); *Go v. Court of Appeals*, 206 SCRA 138, 153 (1992).

[17] Administrative Order No. 7, Re: Rules of Procedure of the Office of the Ombudsman, Rule II, April 10, 1990.

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