

SEVILLA DECIN, PETITIONER, VS. SPO1 MELZASAR TAYCO, SPO1 JEFFREY CONTRIVIDA, SPO1 SUNNY BECARO, SPO1 GLORIA GONZALES AND PO3 ARLO DEONESA, RESPONDENTS.

G.R. NO. 149991. February 14, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by complainant Sevilla Decin (petitioner) assailing the Decision[1] dated January 26, 2001 promulgated by the Court of Appeals (CA) in CA-G.R. SP No. 55768 which annulled the Resolutions dated July 20, 1999 and September 20, 1999 issued by the Department of Justice (DOJ); and the CA Resolution[2] dated September 14, 2001, denying the petitioner's Motion for Reconsideration.

The case originated from the aforesaid Resolutions of the DOJ directing the filing of Murder charges against respondents.

The antecedents of the case, as aptly summarized by the CA, are as follows:

[Petitioner] Sevilla Decin (wife of deceased Ernie Decin) through the National Bureau of Investigation (NBI) filed a complaint for murder against [respondents] and SPO2 Jude dela Rama, all members of the Philippine National Police, Cadiz City, before the Office of the City Prosecutor . . . docketed as I.S. No. 7697. On 16 September 1997, the City Prosecutor in a 15-page resolution found no basis to indict [the respondents] but found probable cause against SPO2 Jude dela Rama (dela Rama, for short) to hold him liable for Murder. Accordingly, the complaint against [respondents] was ordered dismissed. As the respondents therein were police officers, the City Prosecutor in the same resolution directed that it "be forwarded to the Ombudsman for Military" for approval. Said Ombudsman approved the City Prosecutor's Resolution in his "review and recommendation" dated 31 October 1997 under OMB-MIL-Crim-97-0766.

Meanwhile, [petitioner] Sevilla Decin as the principal complainant and aggrieved party in the complaint, appealed the Resolution of 16 September 1997 of the City Prosecutor of Cadiz City to the Department of Justice (DOJ). In a letter dated 24 November 1997, the DOJ, through Assistant Chief State Prosecutor Leonardo Guiab, Jr. directed [petitioner] Decin to submit all material and pertinent affidavits and evidence submitted by both parties in the preliminary investigation, to properly act on her appeal. The letter warned that "(c)ompliance with the above stated requirements within five (5) days from receipt hereof is required, otherwise your appeal will be dismissed."

On 19 May 1998, the DOJ in its 1[st] Indorsement referred [petitioner] Decin's appeal to the Office of the Deputy Ombudsman for Military pursuant to RA No. 6770, the Ombudsman Act of 1998, and OMB-DOJ Joint Circular No. 95-001 dated 05 October 1995.

On 15 June 1998, the Office of the Deputy Ombudsman for the Military denied [petitioner's] appeal, viz: WHEREFORE, premises considered, the herein Appeal is hereby DENIED and the Resolution dated September 16, 1997 under appeal be AFFIRMED.

No motion for reconsideration was filed by [petitioner] Decin.

Meanwhile, on 09 March 1999, dela Rama was arraigned before Branch 60, RTC, Cadiz City, in Criminal Case No. 2006-C, for Murder, and entered a plea of not guilty.

On 20 July 1999, the DOJ issued a resolution in the appeal before it, the first questioned resolution, with the following dispositive portion:

WHEREFORE, the appealed resolution is modified. The City Prosecutor Office of Cadiz City is hereby directed to file the Information for murder against respondents SPO1 MELSAZAR (sic) TAYCO, SPO1 JEFFREY CONTRIVIDA, SPO1 SUNNY BECARO, SPO1 GLORIA GONZALES and SPO3 ARLO DIONEZA and to report to us the action taken within ten (10) days from receipt hereof.

On 12 August 1999, [respondents] received the resolution. They filed a motion for reconsideration through registered mail on 23 August 1999 (although the DOJ says August 24, 1999). On 20 September 1999, the DOJ denied the motion in the second questioned resolution ruling, *inter alia*:

Record discloses that respondents-movants received our resolution on August 12, 1999. This motion was filed with us on August 24, 1999, which is indubitably beyond the reglementary period pursuant to Section 10 of Department Order No. 223 dated June 30, 1993, as amended, which provides, *inter alia* that “(t)he aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on the appeal x x x.”[3]

Respondents filed a Petition for Review under Rule 43 of the Rules of Court with the CA questioning the DOJ’s reversal of the Order dated June 15, 1998 of the Ombudsman considering that the said Order had already become final and eventually executed; that the DOJ was devoid of jurisdiction over the appeal (including preliminary investigation) from the Resolution of the Cadiz Prosecution Office of Cadiz City in I.S. No. 7697; and that the motion for reconsideration of the DOJ Resolution dated July 20, 1999 was filed out of time.[4]

On January 26, 2001, the CA promulgated its Decision, the dispositive portion of which reads:

WHEREFORE, the petition is hereby GRANTED and DOJ’s resolutions dated 20 July 1999 and 20 September 1999 signed by the then Secretary Serafin R. Cuevas, are NULLIFIED. Consequently, the information against SPO2 Jude dela Rama alone STANDS.

SO ORDERED.[5]

The CA held that the City Prosecutor had the prerogative to endorse the results of the preliminary investigation to the Ombudsman for the latter’s approval; that after the Ombudsman affirmed the Prosecutor’s findings exonerating the respondents, the petitioner filed a motion for reconsideration with the Ombudsman but it was denied; that the petitioner never elevated the ruling of the Ombudsman for judicial review, and, hence, it became final and executory; that the DOJ also referred the City Prosecutor’s findings to the Ombudsman after the petitioner failed to comply with the DOJ directive for her to submit all material and pertinent affidavits and evidence gathered during the preliminary investigation; that the Ombudsman likewise denied the petitioner’s appeal and no motion for reconsideration was filed with the Ombudsman, and, by these reasons, the findings of the Ombudsman attained finality; that pursuant to the Ombudsman’s Resolutions, the City Prosecutor filed an information for Murder against SPO2 Jude dela Rama before the Regional Trial Court; that the assumption of jurisdiction by the Ombudsman bars the DOJ from re-asserting its concurrent jurisdiction; that by the DOJ’s own initiative, the petitioner’s appeal from the City Prosecutor’s findings was accepted by the Ombudsman and accordingly the latter resolved the matter in less than thirty days; that the Ombudsman’s ruling cannot later be negated by the mere expedient of the DOJ’s resolution over petitioner’s appeal; and, finally, the jurisprudence

cited by the petitioner has no bearing on the case.

The petitioner is now before this Court and raises the following grounds in her Petition:

I.

THE COURT A QUO COMMITTED SERIOUS AND PATENT ERRORS IN THE FINDING OF FACTS THAT ARE NOT SUPPORTED BY EVIDENCES ON RECORDS WITH THE DEPARTMENT OF JUSTICE, THUS IT ARRIVED ON CONCLUSION BASED ON TAYCO, ET AL. MISREPRESENTATION OF FACTS;

II.

THE COURT A QUO GRIEVOUSLY ERRED IN DENYING DECIN'S MOTION FOR RECONSIDERATION, DESPITE SUBMISSION OF DOCUMENTS AMPLY SHOWING THAT IT PATENTLY ERRED IN ITS FINDING OF FACTS;

III.

THE COURT A QUO COMMITTED SERIOUS ERROR IN DECIDING QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH THE LAW OR APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.[6]

And in her Memorandum, she raises the following issues:

I.

WHETHER OR NOT THE HON. COURT OF APPEALS CORRECTLY HELD THAT IT WAS WITHIN THE PREROGATIVE, IF NOT DUTY, OF THE CADIZ CITY PROSECUTOR TO ENDORSE FOR APPROVAL HER RESOLUTION TO THE OMBUDSMAN FOR MILITARY DESPITE ABSENCE OF BASIS/PROOF THAT THE OFFENSE COMMITTED WAS IN RELATION TO OFFICE;

II.

WHETHER OR NOT THE HON. COURT OF APPEALS CORRECTLY HELD THAT SECRETARY OF JUSTICE IS BARRED FROM RE-ASSERTING HIS JURISDICTION UPON ASSUMPTION BY THE OMBUDSMAN FOR MILITARY OF PETITIONER'S APPEAL.[7]

The petition lacks merit.

The principal question before this Court is whether the June 15, 1998 Order of the Ombudsman for the Military, which approved the September 16, 1997 Resolution of the Cadiz City Prosecutor dismissing the complaint for Murder against herein respondents, may subsequently be modified or reversed by the DOJ despite the fact that the Ombudsman's Resolution has become final and executory.

The petitioner, essentially quoting the CA's findings, argues that the Ombudsman has no jurisdiction over her case since the City Prosecutor found that the offense committed had no relation to the office of or performance of official duties by the respondents; that therefore, the Ombudsman's Resolution is a patent nullity and can never attain finality; that the DOJ has the power to reassert its jurisdiction notwithstanding the DOJ's prior endorsement of petitioner's appeal to the Ombudsman; and, that the Ombudsman has no inherent power to review the prosecutor's resolution.

These contentions are incorrect.

In *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,[8] after a thorough review

of law and jurisprudence, this Court comprehensively discussed the implications of the jurisdiction of the Office of the Ombudsman vis-à-vis the DOJ as to preliminary investigation and prosecution of offenses committed by public officers and employees, viz:

[T]he Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

x x x x

Thus, with the jurisprudential declarations that the Ombudsman and the DOJ have concurrent jurisdiction to conduct preliminary investigation, the respective heads of said offices came up with OMB-DOJ Joint Circular No. 95-001 for the proper guidelines of their respective prosecutors in the conduct of their investigations, to wit:

OMB-DOJ JOINT CIRCULAR NO. 95-001
Series of 1995

x x x

1. Preliminary investigation and prosecution of offenses committed by public officers and employees IN RELATION TO OFFICE whether cognizable by the SANDIGANBAYAN or the REGULAR COURTS, and whether filed with the OFFICE OF THE OMBUDSMAN or with the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall be under the control and supervision of the office of the OMBUDSMAN. 2. Unless the Ombudsman under its Constitutional mandate finds reason to believe otherwise, offenses NOT IN RELATION TO OFFICE and cognizable by the REGULAR COURTS shall be investigated and prosecuted by the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR, which shall rule thereon with finality.

x x x x

Manila, Philippines, October 5, 1995.

(signed) (signed)

TEOFISTO T.
GUINGONA, JR. ANIANO A. DESIERTO

Secretary
Office of the Ombudsman

Ombudsman
Department of Justice

x x x x

Sections 2 and 4, Rule 112 of the Revised Rules on Criminal Procedure on Preliminary Investigation, effective December 1, 2000, to wit:

x x x x

SEC. 4. Resolution of investigating prosecutor and its review. - If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information x x x x

x x x x

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

x x x x

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

confirm the authority of the DOJ prosecutors to conduct preliminary investigation of criminal complaints filed with them for offenses cognizable by the proper court within their respective territorial jurisdictions, including those offenses which come within the original jurisdiction of the Sandiganbayan; but with the qualification that in offenses falling within the original jurisdiction of the Sandiganbayan, the prosecutor shall, after their investigation, transmit the records and their resolutions to the Ombudsman or his deputy for appropriate action. x x x x

x x x x

[T]he Constitution, the Ombudsman Act of 1989, Administrative Order No. 8 of the Office of the Ombudsman, the prevailing jurisprudence and under the Revised Rules on Criminal Procedure, all recognize and uphold the concurrent jurisdiction of the Ombudsman and the DOJ to conduct preliminary investigation on charges filed against public officers and employees.

To reiterate for emphasis, the power to investigate or conduct preliminary investigation on charges against any public officers or employees may be exercised by an investigator or by any provincial or city prosecutor or their assistants, either in their regular capacities or as deputized Ombudsman prosecutors. The fact that all prosecutors are in effect deputized Ombudsman prosecutors under the OMB-DOJ Circular is a mere superfluity. x x x x Thus, there is not even a need to delegate the conduct of the preliminary investigation to an agency which has the jurisdiction to do so in the first place. However, the Ombudsman may assert its primary jurisdiction at any stage of the investigation.

x x x x[9]

(emphasis supplied)

It is undeniable that both the City Prosecutor and the DOJ, on their own initiative, duly referred petitioner's case to the Ombudsman for the latter's resolution in the exercise of his concurrent jurisdiction with the DOJ in accordance with OMB-DOJ Joint Circular No. 95-001 dated October 5, 1995 (Joint Circular). Noteworthy is the fact that the referral made by the City Prosecutor on September 16, 1997 came earlier than the referral of the DOJ,

which is dated May 19, 1998, likewise pursuant to the Joint Circular. When the Ombudsman approved the City Prosecutor's Resolution on October 31, 1997 which affirmed the prosecutor's dismissal of the charges against the respondents, it then and there took cognizance of the case in the exercise of his primary jurisdiction, and, by doing so, such exercise of jurisdiction barred the DOJ from intervening in the preliminary investigation proceedings. In other words, the DOJ was effectively deprived of its power to assert its jurisdiction when the Ombudsman took cognizance of the case pursuant to the Joint Circular.

The Court agrees with respondents' observation that the instant controversy had arisen only after the Resolution of the Ombudsman affirmed the Resolution of the Cadiz City Prosecutor. By then, the Ombudsman's findings had long become final and was in fact implemented when accused dela Rama was arraigned before the Regional Trial Court of Cadiz City, Branch 60. Surprisingly, and notwithstanding its earlier referral of the case to the Ombudsman for review, the DOJ, several months later, issued the questioned Resolutions in an attempt to modify the Resolution of the Cadiz City Prosecutor. The DOJ's attempts to make such modification are *ultra vires* and had no basis in law and in fact. The Court fully concurs with the CA, viz:

(1) It was within the prerogative of the City Prosecutor of Cadiz – if not his duty, to endorse the result of the preliminary investigation of the killing of Ernie Decin to the Ombudsman for Military for his approval. This was so because of a finding that the offense committed – murder – appears to have been perpetrated by SPO2 Jude dela Rama in relation to office. The resolution of the Cadiz City Prosecutor, however, exonerated the rest of the respondents, petitioners herein, holding that “conspiracy is absent”. Said resolution was approved by the Ombudsman for Military in his “Review and Recommendation” dated 31 October 1997, affirming the resolution of the Cadiz City Prosecutor dated 16 September 1997. Subsequently, respondent herein filed a motion for reconsideration of the ruling with the same Ombudsman for Military. But, it was denied. She never elevated the denial-resolution for judicial review. The resolution, therefore, became final and executory.

(2) Respondent's appeal of the Cadiz City Prosecutor's resolution to the Department of Justice was also referred by said department on 19 May 1998 to the Ombudsman for Military, after respondent herein failed to comply with the DOJ directive for her to submit all material and pertinent affidavits and evidence submitted by both parties in the preliminary investigation. On 15 June 1998, the Ombudsman for Military denied respondent's appeal and affirmed the Cadiz City Prosecutor's resolution of 16 September 1997. Again, no motion for reconsideration was filed with the Ombudsman, much less a petition filed in Court for judicial review of the Ombudsman's ruling.

In short, the resolution of the Ombudsman for Military dated 15 June 1998 attained finality. Indeed, an information for murder was filed against SPO2 Jude dela Rama before the RTC of Cadiz City docketed Crim. Case No. 2006-C.

(3) The assumption of jurisdiction by the Ombudsman of the appeal of respondent herein, as a result of the indorsement of DOJ itself, bars the latter from re-asserting jurisdiction. Under the facts obtaining, by DOJ's own initiation (sic), respondent's appeal was accepted and given due course by the Ombudsman who accordingly resolved the matter in less than thirty days. Certainly, the Ombudsman's ruling cannot be put to naught by the mere expedient of the DOJ also resolving the appeal itself. Such situation is not conducive to orderly administration of criminal justice in this jurisdiction.

x x x x

Concededly, murder which is the felony under scrutiny can be “committed in relation to the public office”. In the case at bar, the complaint was indorsed by the DOJ to the Ombudsman who found a probable cause for the crime of murder to exist against dela Rama only excluding the petitioners herein, and additionally that the crime was committed in relation to his office. To repeat, the Ombudsman ruling became final, as it was never elevated to the Court of Appeals for judicial review. It ought not to be disturbed now.

x x x x[10]

And, as stated, since the City Prosecutor had already implemented the Resolution of the Ombudsman by filing the Information with the trial court charging dela Rama alone and after the latter had been arraigned, it has been held that any disposition of the case thereafter as to the dismissal, conviction or acquittal of the accused rests in the sound discretion of the court. Although the prosecutor retains the direction and control of the prosecution of criminal cases even while the case is already in court, he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it.[11]

WHEREFORE, the instant petition is DENIED and the assailed Decision and Resolution of the Court of Appeals are AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., and Chico-Nazario, JJ., concur.
Nachura, J., on leave.

[1] Penned by Associate Justice Buenaventura J. Guerrero (now retired), with Associate Justices Eriberto U. Rosario, Jr. (now retired) and Alicia L. Santos (now retired), concurring.

[2] Ibid.

[3] CA rollo, pp. 184-186.

[4] Id. at 15-16.

[5] Id. at 195.

[6] Rollo, p. 14.

[7] Id. at 79-80.

[8] G.R. No. 159747, April 13, 2004, 427 SCRA 46, 70-75.

[9] Id. at 70-75.

[10] CA rollo, pp. 192-193, 194.

[11] Roberts, Jr. v. Court of Appeals, 324 Phil. 568, 601 (1996), citing Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462, 471.

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