

REYNALDO DE CASTRO, PETITIONER, VS. HON. MANUEL B. FERNANDEZ, JR. IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF LAS PIÑAS CITY, BRANCH 254, METRO MA...

G.R. NO. 155041. February 14, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for certiorari[1] assails the Orders dated 5 and 28 August 2002 of Judge Manuel B. Fernandez, Jr., Regional Trial Court of Las Piñas City, Branch 254 (trial court) in Criminal Case No. 02-0527.[2] The 5 August 2002 Order denied petitioner Reynaldo de Castro's (petitioner) Motion for Reinvestigation and the 28 August 2002 Order denied petitioner's Motion for Reconsideration.

The Facts

On the evening of 11 June 2002, barangay tanods invited petitioner to the barangay hall in connection with a complaint for sexual assault filed by AAA,[3] on behalf of her daughter BBB.[4] Petitioner accepted the invitation without any resistance.

On 12 June 2002, the barangay officials turned over petitioner to the Las Piñas City Police Station.

On 13 June 2002, the police indorsed the complaint to the city prosecutor of Las Piñas City for inquest proceedings.[5] Later, the state prosecutor issued a commitment order for petitioner's detention.[6]

On 18 June 2002, State Prosecutor Napoleon A. Monsod filed an Information against petitioner for the crime of rape. The Information reads:

The undersigned State Prosecutor II accuses REYNALDO DE CASTRO y AVELLANA of the crime of Rape (Art. 266-A, par. 2 in relation to Art. 266-B, Revised Penal Code, as amended by R[.]A[.] [No.] 8353 and R[.]A[.] [No.] 7659) and in relation with R[.]A[.] [No.] 7610, committed as follows:

That on or about the 11[th] day of June 2002 or prior thereto, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously commits [sic] act[s] of sexual assault with one [BBB], a seven (7) years [sic] old minor, by touching and inserting his finger into her vagina against her will and consent.

CONTRARY TO LAW.[7]

On 1 July 2002, petitioner filed a Motion for Reinvestigation praying that the trial court issue an order directing the Office of the Prosecutor of Las Piñas City to conduct a preliminary investigation in accordance with Rule 112 of the Rules of Court. Petitioner also asked that the charge filed against him be amended to acts of lasciviousness instead of rape since "fingering" is not covered under Article 266-A, paragraph 2 of Republic Act No. 8353 (RA

8353).[8] In the Order dated 5 August 2002, the trial court denied petitioner's Motion for Reinvestigation.

On 22 August 2002, petitioner filed a Motion for Reconsideration. In the Order dated 28 August 2002, the trial court denied the motion. Hence, this petition.

The Issues

Petitioner raises the following issues:

- WHETHER A FINGER CONSTITUTES AN OBJECT OR INSTRUMENT IN THE CONTEMPLATION OF REPUBLIC ACT NO. 8353; and
- WHETHER THE ACCUSED IS ENTITLED TO A PRELIMINARY INVESTIGATION IN FULL ACCORD WITH RULE 112 OF THE RULES ON CRIMINAL PROCEDURE.[9]

The Court's Ruling

We dismiss the petition.

At the outset, we declare that petitioner availed of the wrong remedy in assailing the trial court's Orders. Petitioner filed before this Court a petition captioned "Petition for Certiorari" and specifically stated that the petition is based on Rule 65. However, petitioner also stated that the issues raised are pure questions of law,[10] which properly fall under Rule 45.

Under Rule 65, a special civil action for certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[11] In this case, petitioner failed to allege any circumstance which would show that in issuing the assailed Orders, the trial court acted without or in excess of jurisdiction or with grave abuse of discretion. Moreover, following the hierarchy of courts, a special civil action for certiorari assailing an order of the Regional Trial Court should be filed with the Court of Appeals and not with this Court.[12] Petitioner did not raise any special reason or compelling circumstance that would justify direct recourse to this Court.[13]

On the other hand, if the petition is to be treated as a petition for review under Rule 45, the petition would fail because only judgments or final orders that completely dispose of the case can be the subject of a petition for review.[14] In this case, the assailed Orders are only interlocutory orders. Petitioner should have proceeded with the trial of the case and if the trial court renders an unfavorable verdict, petitioner should assail the Orders as part of an appeal that may eventually be taken from the final judgment to be rendered in this case.[15]

Additionally, the petition will not prosper because petitioner failed to comply with the requirements under Rule 45 as to the documents, and their contents, which should accompany the petition. Petitioner failed to submit a duplicate original or certified true copy of the 28 August 2002 Order denying the Motion for Reconsideration.[16] Petitioner also failed to show the timeliness of the filing of the petition because the petition did not state the date when petitioner received the 28 August 2002 Order denying the Motion for Reconsideration.[17]

Hence, on the issue alone of the propriety of the remedy sought by petitioner, this petition must fail.

On the merits, petitioner is deemed to have waived his right to a preliminary investigation. Under Section 7 of Rule 112,[18] if an information is filed in court without a preliminary investigation, the accused may, within five days from the time he learns of its filing, ask for a preliminary investigation. The accused's failure to request for a preliminary investigation within the specified period is deemed a waiver of his right to a preliminary investigation.[19]

In this case, the information against petitioner was filed with the trial court on 18 June 2002. On 20 June 2002,

one Glenn Russel L. Apura, on behalf of Atty. Eduardo S. Villena (Atty. Villena), requested for copies of the pertinent documents on petitioner's case.[20] On 25 June 2002, Atty. Villena entered his appearance as counsel for petitioner.[21] Yet, petitioner only asked for a reinvestigation on 1 July 2002 or more than five days from the time petitioner learned of the filing of the information. Therefore, petitioner is deemed to have waived his right to ask for a preliminary investigation.

Petitioner also questions the charge filed against him by the prosecutor. Petitioner insists that a "finger" does not constitute an object or instrument in the contemplation of RA 8353.

Petitioner is mistaken. Under the present law on rape, Article 266-A of the Revised Penal Code, as amended by RA 8353, and as interpreted in *People v. Soriano*,[22] the insertion of one's finger into the genital of another constitutes "rape through sexual assault." Hence, the prosecutor did not err in charging petitioner with the crime of rape under Article 266-A, paragraph 2[23] of the Revised Penal Code.

WHEREFORE, we DISMISS the petition. We AFFIRM the assailed Orders dated 5 August 2002 and 28 August 2002 of Judge Manuel B. Fernandez, Jr., Regional Trial Court of Las Piñas City, Branch 254.
SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Under Rule 65 of the Rules of Court.

[2] Entitled "*People of the Philippines v. Reynaldo de Castro y Avellana*."

[3] The real name of the victim's mother is withheld per Republic Act No. 7610, Republic Act No. 9262, and A.M. No. 04-11-09-SC. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[4] The real name of the victim is withheld per Republic Act No. 7610, Republic Act No. 9262 and A.M. No. 04-11-09-SC. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006.

[5] Rollo, p. 16.

[6] Id. at 17.

[7] Id. at 18.

[8] Otherwise known as "The Anti-Rape Law of 1997."

[9] Rollo, p. 5.

[10] Id. at 3.

[11] RULES OF COURT, Rule 65, Section 1.

[12] *People v. Cuaresma*, G.R. No. 67787, 18 April 1989, 172 SCRA 415.

[13] Id.

[14] *Rivera v. Court of Appeals*, 452 Phil. 1014 (2003).

[15] *Lalican v. Vergara*, 342 Phil. 485 (1997).

[16] Rules of Court, Rule 45, Section 4.

[17] Id.

[18] Section 7, Rule 112 of the Rules of Court provides:

SEC. 7. When accused lawfully arrested without a warrant. - When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (Emphasis supplied)

[19] PAMARAN, REVISED RULES OF CRIMINAL PROCEDURE ANNOTATED 205 (8th Ed., 2005) citing *People v. Velasquez*, 405 Phil. 74 (2001).

[20] Records, p. 14.

[21] *Id.* at 15.

[22] 436 Phil. 719 (2002).

[23] Article 266-A, paragraph 2 of the Revised Penal Code provides:

Article 266-A. Rape; When and How Committed. - Rape is committed -

x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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