

ERNESTO J. SAN AGUSTIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 158211. August 31, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari filed by Ernesto J. San Agustin of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 71925 dismissing his petition for certiorari.

The Antecedents

Luz Tan executed a notarized criminal complaint and filed the same with the National Bureau of Investigation (NBI) charging the petitioner, the Barangay Chairman of Barangay La Huerta, Parañaque City, with serious illegal detention alleging that the petitioner detained her husband Vicente Tan, on June 19, 2002, without lawful ground therefor.[2]

On June 25, 2002, the petitioner received a subpoena from Ferdinand M. Lavin, the Chief of the Anti-Organized Crime Division of the NBI, requiring him to appear before said office the next day, on June 26, 2002, in order to give his evidence in connection with said complaint and to bring with him the barangay logbook for June 19, 2002. The petitioner complied with the subpoena and presented himself at the NBI with the barangay logbook. However, the petitioner was placed under arrest and prevented from going back home.

On June 27, 2002, the NBI Director transmitted to the Department of Justice the findings of the NBI on its investigation of the case:

On June 19, 2002 at around 9:00 o'clock in the morning while Victim RICARDO TAN and Witness ANTONIO GERONIMO were selling their wares of kitchen utensils along the highway of La Huerta, Parañaque City, Victim TAN was mistaken as a "snatcher" by two tricycle drivers, namely, ROMEO C. ALCANTARA and JOSEFINO FERRER, JR. Victim was turned-over to Subject SAN AGUSTIN and other Subjects at the Barangay Hall of La Huerta, Parañaque City; witness GERONIMO followed them. GERONIMO witnessed that Victim was beaten by Subjects and locked-up at the Barangay jail so he decided to inform the wife of the Victim (Complainant) who was residing in San Pedro, Laguna. When Complainant went to the Barangay Hall on the same day and inquired on the whereabouts of his husband, two female clerks thereat denied having seen the Victim. Complainant was able to talk to Subject SAN AGUSTIN the following day but he also denied having seen Victim, worst Subject SAN AGUSTIN was furious and even shouted at them and brought out his knife. Up to date, Victim, never resurfaced nor his whereabouts located. Record at the NBI central file of Subject SAN AGUSTIN revealed that he has several cases of homicide, murder and multiple murder.[3]

The NBI Director stated that the basis for the arrest of the petitioner was:

BASIS OF ARREST:

Subject SAN AGUSTIN was subpoenaed to appear before the NBI-AOCD to controvert allegations filed

against him for kidnapping by Ms. Luz Tan. He was enjoined to come with his Counsel and bring the logbook of the Barangay. When Subject appeared at the NBI, he presented at once the logbook of the Barangay. It was noted at the said logbook that there was no entry on June 19, 2002 that Victim RICARDO TAN was arrested or transmitted to any law enforcement agency or proper authority.[4]

State Prosecutor Elizabeth L. Berdal conducted an inquest investigation on June 27, 2002 and came out with a Resolution, on the same day, affirmed by the Assistant Chief State Prosecutor, finding probable cause against the petitioner for serious illegal detention under Article 267 of the Revised Penal Code.[5]

On June 28, 2002, an Information was filed before the Regional Trial Court of Parañaque City, charging the petitioner with kidnapping/serious illegal detention with no bail recommended. The case was raffled to Branch 258 of the court and docketed as Criminal Case No. 02-0759.

On July 1, 2002, the petitioner filed a Motion to Quash the Information on the ground that he was illegally arrested and subjected to an inquest investigation; hence, he was deprived of his right to a preliminary investigation. He also prayed that he be released from detention and that, in the meantime, the NBI be ordered to refile the complaint against him with the Office of the Parañaque City Prosecutor and for the latter to conduct a preliminary investigation. On July 4, 2002, the petitioner filed a Motion to Quash the Information, this time, on the ground that the facts alleged therein do not constitute the felony of kidnapping/serious illegal detention. He claimed that he was a barangay chairman when the private complainant was allegedly detained; hence, he should be charged only with arbitrary detention, the most severe penalty for which is reclusion temporal.

The prosecution opposed the petitioner's motion to quash the Information on the ground that when he detained the private complainant, he acted in his private capacity and not as a barangay chairman.[6]

On July 24, 2002, the RTC issued an Order directing the City Prosecutor to conduct a reinvestigation within a non-extendible period of forty-five (45) days.[7] Assistant City Prosecutor Antonietta Pablo Medina was assigned to conduct the reinvestigation. The petitioner opposed the reinvestigation contending that the prosecutor should conduct a regular preliminary investigation since the inquest investigation was void. He refused to submit a counter-affidavit.

On July 31, 2002, the petitioner filed a petition for certiorari with the Court of Appeals assailing the July 24, 2002 Order of the RTC. He raised in his petition the following issues:

- Whether or not respondent Judge De Leon acted arbitrarily and in grave abuse of discretion in not granting petitioner's "Urgent Motion to Quash Information" dated 01 July 2002.
- Whether or not respondent Judge De Leon acted arbitrarily and in grave abuse of discretion in not granting petitioner's "Urgent Motion to Quash On The Ground That The Facts Charged Do Not Constitute An Offense" dated 04 July 2002.
- Whether or not respondent Judge De Leon acted arbitrarily and in grave abuse of discretion in not granting bail as a matter of right in favor of the petitioner.
- Whether or not respondent Judge Jose S. Jacinto, Jr. of the Metropolitan Trial Court of Parañaque, Branch 77, can validly and legally proceed with the hearing of Criminal Case No. 02-2486.[8]

In the meantime, on August 27, 2002, the Assistant City Prosecutor came out with a Resolution finding probable cause of arbitrary detention against the petitioner and recommending that the Information for arbitrary detention and the Motion to Withdraw Information appended thereto be approved.[9] The City Prosecutor opposed the said Resolution.

On August 28, 2002, the Assistant City Prosecutor filed with the trial court a “Motion to Withdraw Information.”[10] On August 30, 2002, the RTC issued an Order granting the motion and considered the Information withdrawn.

On the same day, an Information was filed with the Metropolitan Trial Court (MeTC) docketed as Criminal Case No. 02-2486, charging the petitioner with arbitrary detention, viz:

That on or about the 19[th] day of June 2002 and subsequent thereto, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being a Barangay Chairman of Brgy. La Huerta, Parañaque City, a public officer, committing the offense in relation to office, did then and there willfully, unlawfully and feloniously detain one RICARDO TAN, an act done as he well knew, arbitrary and without legal ground (sic).

CONTRARY TO LAW.[11]

The case was raffled to Branch 77 of the court. The petitioner posted a cash bond of P3,000.00 for his provisional release without prejudice to the outcome of his petition in the Court of Appeals.[12]

On April 15, 2003, the Court of Appeals rendered its decision denying due course and dismissing the petition for certiorari of the petitioner.

The petitioner filed the petition at bar contending that:

4.1

THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY JUDGE RAUL E. DE LEON WHEN HE DENIED PETITIONER’S “URGENT MOTION TO QUASH INFORMATION” DATED JULY 01, 2002.

4.2.

THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY JUDGE RAUL E. DE LEON WHEN HE DENIED PETITIONER’S “URGENT MOTION TO QUASH ON THE GROUND THAT THE FACTS CHARGED DO NOT CONSTITUTE AN OFFENSE” DATED 04 JULY 2002.

4.3.

THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY JUDGE RAUL E. DE LEON WHEN HE DENIED PETITIONER OF HIS CONSTITUTIONALLY-GUARANTEED RIGHT TO BAIL.

4.4.

THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT JUDGE JOSE S. JACINTO OF THE METROPOLITAN TRIAL COURT OF PARAÑAQUE, BRANCH, (sic) CAN VALIDLY AND LEGALLY PROCEED WITH THE HEARINGS IN CRIMINAL CASE NO. 02-2486.[13]

The petitioner asserts that he was illegally arrested by the NBI; hence, he was entitled to a regular preliminary investigation, not merely to an inquest investigation. He contends that since the Information charging him with kidnapping/serious illegal detention was filed before the Regional Trial Court without affording him a preliminary investigation, the Information is void. The RTC, the petitioner avers, should have granted his motion to quash the Information and ordered the NBI to refile its complaint against him with the Office of the City Prosecutor of Parañaque for the appropriate preliminary investigation and that, in the meantime, the RTC should have ordered

his release from detention. The petitioner posits that the RTC committed a grave abuse of its discretion amounting to excess or lack of jurisdiction in denying his motion to quash the Information and directing the City Prosecutor to conduct a reinvestigation. On the other hand, since the Assistant City Prosecutor did not conduct a regular preliminary investigation before filing the Information for arbitrary detention against him with the MeTC, the Information is void. Hence, the MeTC should be ordered to quash the Information filed therein.

In its Comment to the petition, the Office of the Solicitor General (OSG) contends that the petition for certiorari of the petitioner in the Court of Appeals and in this Court had become moot and academic by the withdrawal of the Information from the Regional Trial Court and filing of the Information for arbitrary detention against the petitioner in the MTC. The inquest investigation conducted by the State Prosecutor was valid because the petitioner refused to execute a waiver under Article 125 of the Revised Penal Code. The OSG asserts that the investigation conducted by the Assistant City Prosecutor, as directed by the RTC, was valid. The petitioner is estopped from assailing the Resolution of the Assistant City Prosecutor finding probable cause for arbitrary detention because of his failure to submit his counter-affidavit.

The Court of Appeals ruled that the petitioner was unlawfully arrested; hence, he was entitled to preliminary investigation and release from detention subject to his appearance during the preliminary investigation. However, the Court of Appeals declared that the lack of preliminary investigation did not impair the validity of the Information filed with the RTC. Moreover, the Court of Appeals declared that the petitioner had already been granted a reinvestigation after which the Information filed with the RTC was withdrawn. Consequently, the appellate court further declared that the petition had been mooted by the withdrawal of the Information from the RTC and the filing of another Information in the MeTC for arbitrary detention. The appellate court also held that the RTC did not commit grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the assailed Order. It ruled that even if the reinvestigation conducted by the City Prosecutor is defective, the Information filed with the MeTC is valid because under the Revised Rules of Criminal Procedure, there is no need for a preliminary investigation for crimes cognizable by the Metropolitan Trial Court.

The petition is partially granted.

We agree with the Court of Appeals that the petitioner was unlawfully arrested without a warrant of arrest against him for kidnapping/serious illegal detention. As correctly ruled by the Court of Appeals:

Furthermore, warrantless arrest or the detention of petitioner in the instant case does not fall within the provision of Section 5, Rule 113, Revised Rules on Criminal Procedure, as amended, which provides:

“Sec. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has been committed and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.”

considering that petitioner only went to the Office of the NBI to answer the subpoena it issued which was seven

(7) days after the supposed turning over of the custody of Ricardo Tan to petitioner who was then the Barangay Chairman of La Huerta, Parañaque City, and his locking up in the barangay jail and, thereafter, he was already arrested and detained. Certainly, the “arresting” officers were not present within the meaning of Section 5(a) at the time when the supposed victim, Ricardo Tan, was turned over to petitioner. Neither could the “arrest” which was effected seven (7) days after the incident be seasonably regarded as “when the turning over and locking up in the Barangay jail had in fact just been committed within the meaning of Section 5(b). Moreover, none of the “arresting” officers had any “personal knowledge” of facts indicating that petitioner was the person to whom the custody of the victim Ricardo Tan was turned over and who locked up the latter in the Barangay jail. The information upon which the “arresting” officers acted upon had been derived from the statements made by the alleged eyewitnesses to the incident which information did not, however, constitute personal knowledge.[14]

Consequently, the petitioner is entitled to a preliminary investigation before an Information may be filed against him for said crime. The inquest investigation conducted by the State Prosecutor is void because under Rule 112, Section 7 of the Revised Rules on Criminal Procedure, an inquest investigation is proper only when the suspect is lawfully arrested without a warrant:

SEC. 7. When accused lawfully arrested without 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 investigation 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.[15]

We also agree with the Court of Appeals that the absence of a preliminary investigation does not affect the jurisdiction of the trial court but merely the regularity of the proceedings. It does not impair the validity of the Information or otherwise render it defective.[16] Neither is it a ground to quash the Information or nullify the order of arrest issued against him or justify the release of the accused from detention.[17] However, the trial court should suspend proceedings and order a preliminary investigation[18] considering that the inquest investigation conducted by the State Prosecutor is null and void.[19] In sum, then, the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in ordering the City Prosecutor to conduct a reinvestigation which is merely a review by the Prosecutor of his records and evidence instead of a preliminary investigation as provided for in Section 3, Rule 112 of the Revised Rules on Criminal Procedure.

However, we do not agree with the ruling of the Court of Appeals that there was no need for the City Prosecutor to conduct a preliminary investigation since the crime charged under the Information filed with the MeTC was arbitrary detention under Article 124, paragraph 1 of the Revised Penal Code punishable by arresto mayor in its maximum period to prision correccional in its minimum period, which has a range of four months and one day to two years and four months. Whether or not there is a need for a preliminary investigation under Section 1 in relation to Section 9 of Rule 112 of the Revised Rules on Criminal Procedure depends upon the imposable penalty for the crime charged in the complaint filed with the City or Provincial Prosecutor’s Office and not upon the imposable penalty for the crime found to have been committed by the respondent after a preliminary investigation. In this case, the crime charged in the complaint of the NBI filed in the Department of Justice was kidnapping/serious illegal detention, the imposable penalty for which is reclusion perpetua to death.

IN LIGHT OF ALL THE FOREGOING, the petition is PARTIALLY GRANTED. The Order of the Regional Trial Court of Parañaque City, dated July 24, 2004, ordering the City Prosecutor to conduct a reinvestigation is SET ASIDE. The Regional Trial Court is directed to ORDER the City Prosecutor of Parañaque City to conduct a preliminary investigation as provided for in Section 3, Rule 112 of the Revised Rules on Criminal Procedure. In

the meantime, the Metropolitan Trial Court of Parañaque City, Branch 77, is ordered to suspend the proceedings in Criminal Case No. 02-2486 pending the outcome of said preliminary investigation.

SO ORDERED.

Austria-Martinez, (Acting Chairman), Tinga, and Chico-Nazario, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Conrado M. Vasquez, Jr. and Rosmari D. Carandang, concurring.

[2] Rollo, pp. 47-48.

[3] Id. at 57.

[4] Id. at 56.

[5] Id. at 44-46.

[6] Id. at 74-75.

[7] Id. at 76.

[8] Id. at 36.

[9] Id. at 77-79.

[10] Id. at 80.

[11] Id. at 82.

[12] Id. at 83.

[13] Id. at 18-19.

[14] Id. at 39-40.

[15] Id.

[16] Villaflor vs. Viva, 349 SCRA 194 (2001).

[17] Larranaga vs. Court of Appeals, 287 SCRA 581 (1998).

[18] Villaflor vs. Viva, *supra*.

[19] Doromal vs. Sandiganbayan, 177 SCRA 354 (1989).

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