NACE SUE P. BUAN, PETITIONER, VS. FRANCISCO T. MATUGAS, RESPONDENT.

G.R. NO. 161179. August 07, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court are the following issuances of the Court of Appeals (CA) in CA-G.R. SP No. 74094, to wit:

> - Decision[1] dated September 4, 2003, reversing and setting aside the resolutions of the Secretary of Justice which overturned that of the City Prosecutor of Pasay City and directed him to cause the filing of an information for attempted rape against herein respondent; and
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> - Resolution[2] dated December 9, 2003, denying petitioner's motion for reconsideration.

The current proceedings were started on May 9, 2001 with a complaint for attempted rape filed by petitioner against the herein respondent, alleging the following facts:

Back in 1995, petitioner was a regular employee of the provincial government of Surigao del Norte where respondent, Francisco Matugas, was then the provincial governor. Sometime from July 22 to 28, 1995, respondent asked petitioner to accompany him to Manila, allegedly on the pretense that the trip was work-related.

The complaint alleges that on one of those days from July 22 to 28, 1995, respondent asked petitioner to join him for lunch at Heritage Hotel. Upon arriving at the hotel, however, respondent allegedly asked her to accompany him first to his room to get some important papers. Once inside the room, respondent opened his attache case to look for his papers while petitioner excused herself to go to the comfort room. After she came out of the comfort room, the Governor also used the comfort room.

Afterwards, the Governor came out of the comfort room allegedly without any shirt on, explaining that he would have to change his shirt to be dressed properly when meeting some guests during lunch. Then, without any warning, he suddenly grabbed petitioner by her shoulder as he passed by the chair she was seated on, embraced and kissed her, prompting her to resist by pushing and elbowing him, causing him to lose his balance and immediately desisted.

Thereafter, petitioner reported the incident to her mother who prevailed on her not to file any complaint yet since respondent was still powerful and influential being the Provincial Governor of Surigao del Norte at that time. Petitioner nevertheless decided to immediately resign from her work at the Provincial Government.

Almost six years later, or on May 9, 2001, petitioner finally gathered enough courage to execute and file an affidavit-complaint against the respondent before the Office of the City Prosecutor of Pasay City. On the same date, petitioner's mother executed a corroborating affidavit.

On June 22, 2001, the respondent executed and submitted his counter-affidavit belying petitioner's allegations. He

averred that he was never billeted in Heritage Hotel and his tight schedule would not allow him to be at the scene of the alleged crime. On July 2, 2001, petitioner filed her reply-affidavit and the case was thereafter deemed submitted for resolution.

In a Resolution dated July 5, 2001, the City Prosecutor of Pasay City dismissed the complaint for lack of probable cause prompting petitioner to file an appeal with the Department of Justice on July 20, 2001.

On February 13, 2002, the Secretary of Justice issued a Resolution reversing the findings of the City Prosecutor and holding that there is reasonable ground to believe that a crime has been committed and that respondent is probably guilty thereof. A subsequent Resolution of September 30, 2002 denied respondent's motion for reconsideration.

On November 28, 2002, respondent filed with the CA a petition for certiorari under Rule 65 of the Rules of Court with prayer for preliminary injunction, claiming grave abuse of discretion on the part of the Secretary of Justice in the issuance of the aforementioned resolutions. The petition was docketed in the appellate court as CA-G.R. SP No. 74094.

In its decision of September 4, 2003, the Special Division of Five of the CA reversed and set aside the questioned resolutions of the Secretary of Justice, and ordered the dismissal of the criminal information for Attempted Rape filed against the respondent then pending before Branch 111 of the Regional Trial Court of Pasay City, thus:

> WHEREFORE, the petition is granted. The questioned resolutions of the Secretary of Justice dated 13 February 2002 and 30 September 2002 are hereby REVERSED and SET ASIDE and the criminal information for Attempted Rape filed against the petitioner (now respondent) before Branch III of the Regional Trial Court of Pasay City is ordered dismissed.
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> SO ORDERED.

Then Associate Justice Romeo A. Brawner (now a Comelec Commissioner) dissented from the majority, voting to uphold the ruling of the Secretary of Justice and to dismiss respondent's petition.

Her motion for reconsideration having been denied by the CA in its Resolution of December 9, 2003, petitioner is now with this Court via the present recourse, raising the main issue of whether the CA had erred in holding that the Secretary of Justice committed grave abuse of discretion when he overturned the findings of the City Prosecutor.

The petition is impressed with merit.

First off, it should be stressed that the CA is empowered under its certiorari jurisdiction to annul and declare void the questioned resolutions of the Secretary of Justice, but only on two (2) grounds, namely, lack of jurisdiction, and grave abuse of discretion amounting to lack or excess of jurisdiction.

The task before us now is to determine whether the CA correctly exercised its power, or, better still, whether the CA gravely erred when it REVERSED and SET ASIDE the questioned resolutions of the Secretary of Justice by substituting its own judgment to that of the former. Admittedly, the CA has the original jurisdiction to issue writs of certiorari not only under the Rules but also under the judicial power granted to courts by no less that the Constitution.[3] But, the question is, can the CA reverse and set aside a decision of the Secretary of Justice and substitute its own judgment, as it did in this case?

Definitely not.

The power to reverse and set aside partakes of an appellate jurisdiction which the CA does not have over

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judgments of the Secretary of Justice exercising quasi-judicial functions.

There is a whale of a difference between the CA's power of review in the exercise of its appellate jurisdiction and its original jurisdiction over petitions for certiorari as that filed by the respondent in CA-G.R. SP No. 74094.[4] Certiorari power is limited to questions of jurisdiction and grave abuse of discretion only. Wisdom or error of judgment on the part of the Secretary of Justice in arriving at his conclusions of fact and law which is proper in an appeal cannot legitimately be the subject of review in a petition for certiorari before the CA because the decision of the Secretary of Justice is not appealable to the CA.

It is only too unfortunate that the CA confused these two powers in resolving the petition for certiorari lodged before it by the respondent. It is now our duty to put things in their proper light.

The assailed CA decision starts out on precarious footing when it made the following pronouncements:

> At the outset, it must be stated that while in this petition We are not called upon to pronounce the innocence or guilt of the [respondent], in the very nature of things, however, We are doubtless really asked to determine whether it was ultimately fair, just, even necessary, on the basis of the factual details and circumstances alleged in the complaint itself, for the government to have allowed said complainant [herein petitioner] to sully [respondent's] name and reputation and stigmatize his family, and put him to great inconvenience and expense, to say nothing of the repercussions upon his political future, x x x[5] (Words in bracket added).

In his dissenting opinion,[6] Justice Brawner correctly pointed out:

> x x x [B]y considering such extraneous matters as the possible effect a pending rape case will have on his [respondent's] political future, [the decision] may send the wrong signal to other litigants that a [sic] one set of rules apply to those who are wealthy and powerful, and another to those who are possessed of neither fortune nor authority: that to the former, the Courts show a more merciful and indulgent [judiciary]; but to the latter, the Judiciary if harsh and unbending.[7]

We thus agree with the observation of Justice Brawner that the only issue rightfully presented before the CA was whether or not the Secretary of Justice committed grave abuse of discretion in reversing the findings of the City Prosecutor, dismissing the complaint, and directing the filing of an information for attempted rape against the herein respondent.

This is, as it should be for the determination of probable cause, a function that, by law, pertains to the public prosecutor.[8] Absent a clear showing of grave abuse of discretion amounting to lack of jurisdiction, the appellate court is precluded, under the principle of separation of powers, from usurping the investigatory and prosecutory powers granted by the Constitution to the executive branch, the Department of Justice.

There is grave abuse of discretion only when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility, and it must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[9] Not every error in the proceedings, or every erroneous conclusion of law or fact, is grave abuse of discretion.[10] Hence, in his dissent, Justice Brawner noted with dismay:

> x x x Sadly, the majority, in resolving the issue, may have trodden on territory forbidden to the Judicature when they completely foreclosed the right of [petitioner] to a trial of her accusations on the merits, by substituting the judgment of this Court to that of the agency of the Executive Branch specifically tasked with the prosecution of criminal offenses. Differently stated, We may have acted like prosecutors when We should have acted more magisterially.[11]

> xxx xxx xxx
>
> x x x While a resolution of the existence of grave abuse in this case necessitates an examination of the evidence on record, such evaluation should never touch upon the quality of the evidence, or the defenses to which the same are subject, but should be confined to a determination of whether or not there is such evidence as to support the act of the respondent Secretary, regardless of whether or not the same may later be shown to be of little probative value during trial. Nor should certiorari issue simply because We happen to disagree with the conclusions of the Secretary of Justice. For here, We are not a trier of facts. That office properly belongs to the trial court, and all allegations pointing towards the exculpation of the petitioner are matters of evidence, which should be put forward during trial. x x x[12]

The CA, in reviewing and weighing/evaluating the evidence submitted, exercised appellate jurisdiction and stepped down to the role of becoming a trier of facts which is definitely uncalled for under the circumstances. The appellate court had "jumped the gun," so to speak, when it had, for all intents and purposes, acquitted the respondent based on the facts alleged and the defenses he raised in denial of said allegations. It had, indeed, missed a crucial step: the trial proper. Had the respondent been convicted by the trial court and an appeal therefrom taken to the CA, then the latter's consideration of such matters as his defense of alibi would be proper, but not in a certiorari proceedings before it.

We may also be well reminded that the purpose of preliminary investigation is to determine whether there is sufficient ground to engender a well-founded belief as to the fact of the commission of a crime and the respondent's probable guilt thereof.[13] A finding of probable cause need only rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. While probable cause demands more than bare suspicion, it requires less than evidence which would justify conviction. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.[14]

It is exclusively within the ambit of the prosecutor's powers to determine whether probable cause exists and which crime to prosecute for. Should it be determined later on after a full-blown trial where a full account can be made of the incident, that not all the elements of attempted rape exist, it is then for the trial court to acquit respondent or convict him for a lesser crime necessarily included therein such as acts of lasciviousness or unjust vexation. But the Secretary of Justice has the discretion to determine for which crime he should prosecute for.

It is understandable for the prosecutor to ordinarily aim high. It has a valid reason. There are many instances when, for example, an information for murder is filed and the trial court finds it to be only homicide due to the failure of the prosecution to prove certain qualifying circumstances. These are instances when the prosecution deems it prudent to play safe because had it only filed an information for homicide and facts come out during trial that could qualify the crime to murder, there would be nothing that can be done to change the crime charged, lest a violation of due process or double jeopardy results. The same logic applies in the present case. It is for the trial

court to decide whether lewd design exists. Again, to quote Justice Brawner in his dissenting opinion:

> x x x [W]hen the majority states in its decision that there is an absence of lewd designs on the part of the petitioner, it exercises a power properly the province of an investigating prosecutor. And when it argues that the crime committed is acts of lasciviousness or perhaps merely unjust vexation, it plays a role not given to it by the rules governing the Judiciary. For "lewd designs" is a state of the mind not discernible by a simple reading of the dry, lifeless pages of [petitioner's] complaint affidavit or [respondent's] counter-affidavit: it is a creature whose being, or lack thereof, must be threshed out in a full-blown trial wherein parties are given the opportunity to give their testimony in open court and the opponent given the chance to cross-examine, under the watchful eye of the trial judge who observes with an adept eye the truthfulness of the witness' avowals. x x x (Words in brackets supplied).

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In fine, we rule and so hold that the Secretary of Justice committed no grave abuse of discretion when it found the existence of probable cause. The CA, therefore, had erred in reversing its findings at this embryonic stage of the proceedings.

WHEREFORE, the petition is GRANTED, and the assailed decision and resolution of the CA are REVERSED and SET ASIDE.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Eliezer R. De Los Santos (now deceased), with Associate Justices Eloy R. Bello, Jr. (now retired), Josefina Guevarra-Salonga and Jose C. Mendoza, concurring; Associate Justice Romeo A. Brawner dissented; rollo, pp. 68-81.

[2] Id. at 89-90.

[3] Article VIII, Section 1.

[4] Supra note 1.

[5] Supra note 1 at 69-70.

[6] Rollo, pp. 82-88.

[7] Id. at p. 87.

[8] Lim v. Felix, G.R. Nos. 94054-57, February 19, 1991, 194 SCRA 292, citing Castillo v. Villaluz, G.R. No. 34285, March 8, 1989, 171 SCRA 39.

[9] Chua Huat v. Court of Appeals, G.R. No. 53851, July 9, 1991, 199 SCRA 1.

[10] Tavera-Luna, Inc. v. Nable, 67 Phil. 340 (1939).

[11] Rollo, pp. 82-83.

[12] Id. at 85-86.

[13] Paderanga v. Drilon, G.R. No. 96080, April 19, 1991, 196 SCRA 86.

[14] Webb v. De Leon, et al., G.R. No. 121234, August 23, 1995, 247 SCRA 652.

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