

MACA-ANGCOS ALAWIYA Y ABDUL, ISAGANI ABDUL Y SIACOR, AND SARAH LANGCO Y ANGLI, PETITIONERS, VS. COURT OF APPEALS, SECRETARY OF JUSTICE SIMEON A. DATUMANONG, P/C INSP. MICHAEL AN...

G.R. No. 164170. April 16, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 4 February 2004 Decision[2] and 25 June 2004 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 76345. The Court of Appeals dismissed the petition for certiorari filed by petitioners Maca-Angcos Alawiya y Abdul, Isagani Abdul y Siacor, and Sarah Langco y Angli.

The Facts

On 18 September 2001, petitioners executed sworn statements[4] before the General Assignment Section of the Western Police District in United Nations Avenue, Manila, charging accused P/C Insp. Michael Angelo Bernardo Martin, P/Insp. Allanjing Estrada Medina, PO3 Arnold Ramos Asis, PO2 Pedro Santos Gutierrez, PO2 Ignacio De Paz and PO2 Antonio Sebastian Berida, Jr., who were all policemen assigned at that time at the Northern Police District, with kidnapping for ransom.

The sworn-statements of petitioners commonly alleged that at about 10:00 in the morning of 11 September 2001, while petitioners were cruising on board a vehicle along United Nations Avenue, a blue Toyota Sedan bumped their vehicle from behind; that when they went out of their vehicle to assess the damage, several armed men alighted from the Toyota Sedan, poked guns at, blindfolded, and forced them to ride in the Toyota Sedan; that they were brought to an office where P10,000,000 and two vehicles were demanded from them in exchange for their freedom; that, after haggling, the amount was reduced to P700,000 plus the two vehicles; that the money and vehicles were delivered in the late evening of 11 September 2001; that they were released in the early morning of 12 September 2001 in Quiapo after they handed the Deed of Sale and registration papers of the two vehicles.

After the initial investigation by the Western Police District, the case was reported to the Philippine National Police Intelligence Group in Camp Crame, where a lateral coordination was made with the Philippine National Police-National Capital Regional Police Office Regional Intelligence and Investigation Division (PNP-NCR-RID) for the identification, arrest and filing of appropriate charges against the accused. After its own investigation, the PNP-NCR-RID recommended that accused be charged with violation of Article 267 of the Revised Penal Code,[5] as amended by Republic Act No. 7659.

State Prosecutor Emmanuel Y. Velasco (State Prosecutor Velasco), who conducted the preliminary investigation, issued a Resolution[6] dated 14 January 2002, recommending that the accused be indicted for the crime of

kidnapping for ransom. The Resolution was endorsed for approval by Assistant Chief State Prosecutor Nilo C. Mariano and approved by Chief State Prosecutor Jovencito R. Zuño.

On 24 January 2002, State Prosecutor Velasco filed with the Regional Trial Court of Manila, Branch 41,[7] an Information for Kidnapping for Ransom against the accused with no bail recommended. The Information, docketed as Criminal Case No. 02198832, reads as follows:

That on September 11, 2001 at about 10:00 AM along United Nations Avenue, Manila and within the jurisdiction of this Honorable Court, the above-named Accused, who are all police officers, conspiring, confederating and mutually helping one another and grouping themselves together, did then and there by force and intimidation, and by the use of high-powered firearms, willfully, unlawfully and feloniously take, carry away and deprive MACA-ANGCOS ALAWIYA, ISAGANI ABDUL and ZARAH LANGCO of their liberty against their will for the purpose of extorting ransom as in fact a demand for ransom was made as a condition for their release amounting to TEN MILLION PESOS (PHP10,000,000.00) which amount was later reduced to SEVEN HUNDRED THOUSAND (PHP700,000.00) plus two vehicles consisting of TOYOTA FX and MITSUBISHI ADVENTURE to the damage and prejudice of MACA-ANGCOS ALAWIYA, ISAGANI ABDUL and SARAH LANGCO in said amount and such other amounts as may be awarded to them under the provisions of the Civil Code.

CONTRARY TO LAW.[8]

On 28 January 2002, the trial court, upon motion by the prosecution, issued a Hold Departure Order against the accused.[9] On even date, the trial court issued a Warrant of Arrest against all the accused.[10]

Meanwhile, on 8 February 2002, the accused filed a petition for review of the Resolution of State Prosecutor Velasco with the Office of the Secretary of Justice.

On 18 February 2002, the accused moved for the quashal of the Information on the ground that "the officer who filed the Information has no authority do so." [11]

In an Order[12] dated 27 February 2002, the trial court denied the motion to quash on the ground that under the ruling in *People v. Mapalao*, [13] an accused who is at large is not entitled to bail or other relief. The trial court also held that the jurisdiction and power of the Ombudsman under Section 15(1) of Republic Act No. 6770 (RA 6770), [14] as well as Administrative Order No. 8 of the Office of the Ombudsman, are not exclusive but shared or concurrent with the regular prosecutors. Thus, the authority of the Department of Justice to investigate, file the information and prosecute the case could no longer be questioned.

In a Resolution[15] promulgated on 24 September 2002, then Secretary of Justice Hernando B. Perez reversed the ruling of State Prosecutor Velasco and ordered the latter to cause the withdrawal or dismissal of the Information for kidnapping for ransom. The Secretary of Justice ruled that there was no prior approval by the Office of the Ombudsman before the Information for kidnapping was filed with the trial court. He also found that the incident complained of was a bungled buy-bust operation, not kidnapping for ransom.

On 11 October 2002, petitioners filed a Motion for Reconsideration, which was denied by then Secretary of Justice Simeon A. Datumanong in a Resolution promulgated on 17 February 2003.[16]

Petitioners filed a petition for certiorari with the Court of Appeals, seeking the nullification of the Secretary of Justice's ruling for having been rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

The Court of Appeals rendered a Decision of 4 February 2004 dismissing the petition for certiorari. The Court of Appeals denied the petitioners' motion for reconsideration in a Resolution of 25 June 2004.

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals sustained the finding of the Secretary of Justice that the incident complained of was a bungled buy-bust operation, contrary to the finding of State Prosecutor Velasco, that it was a kidnapping for ransom.

The Court of Appeals gave credence to the accused's documentary evidence which supported their claim that the incident was a botched buy-bust operation. The Court of Appeals specifically noted the Sinumpaang Salaysay of Cesar Landayan (Landayan), who was driving a taxi at the time of the incident and was apprehended together with petitioners. The Sinumpaang Salaysay categorically stated that he and petitioners were released from accused's custody at about 12:50 in the afternoon of the same day, 11 September 2001. Thus, Cesar's statement refuted the complaint of petitioners that they were freed only in the morning of 12 September 2001 after a pay-off of P700,000 in casino chips and two vehicles. The Court of Appeals stressed that Landayan's Sinumpaang Salaysay was given on 14 September 2001, prior to petitioners' complaint for kidnapping for ransom which was filed on 18 September 2001 before the Western Police District. Having been executed prior to the filing of the complaint for kidnapping for ransom by petitioners, Cesar's Sinumpaang Salaysay could not be discredited as a cover-up evidence.

The Court of Appeals upheld the Secretary of Justice's ruling that prior approval by the Office of the Ombudsman for the Military was needed for the filing of the Information before the RTC, pursuant to OMB-DOJ Joint Circular No. 95-001.[17] The Court of Appeals further sustained the finding that there were sufficient evidence that the offense charged against accused was committed in relation to their office and that the accused were all acting in the discharge of their functions as policemen.

The Issues

The issues in this case are:

- Whether the prior approval by the Office of the Ombudsman for the Military is required for the investigation and prosecution of the instant case against the accused;
- Whether the reversal by the Secretary of Justice of the resolution of State Prosecutor Velasco amounted to an "executive acquittal;"
- Whether the accused policemen can seek any relief (via a motion to quash the information) from the trial court when they had not been arrested yet; and
- Whether there was probable cause against the accused for the crime of kidnapping for ransom.

The Ruling of this Court

On the prior approval by the Ombudsman for the investigation and prosecution of the case against the accused policemen

The Office of the Solicitor General (OSG), which is representing the Secretary of Justice, agrees with petitioners that prior approval by the Ombudsman is not required for the investigation and prosecution of the criminal case against the accused policemen. The OSG correctly cites the case of *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*,[18] where the Court held that the power of the Ombudsman to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government such as the provincial, city and state prosecutors. In view of the foregoing,

both the Court of Appeals and the Secretary of Justice clearly erred in ruling that prior approval by the Ombudsman is required for the investigation and prosecution of the criminal case against the accused policemen.

On the reversal by the Secretary of Justice
of the resolution of State Prosecutor Velasco

Settled is the rule that the Secretary of Justice retains the power to review resolutions of his subordinates even after the information has already been filed in court.[19] In *Marcelo v. Court of Appeals*, [20] reiterated in *Roberts, Jr. v. Court of Appeals*, [21] this Court clarified that nothing in *Crespo v. Mogul* [22] forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases despite an information already having been filed in court.[23] The nature of the power of control of the Secretary of Justice over prosecutors was explained in *Ledesma v. Court of Appeals* [24] in this wise:

Decisions or resolutions of prosecutors are subject to appeal to the Secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings. (Emphasis supplied)

Contrary to petitioners' contention, the Secretary of Justice's reversal of the Resolution of State Prosecutor Velasco did not amount to "executive acquittal" because the Secretary of Justice was simply exercising his power to review, which included the power to reverse the ruling of the State Prosecutor. However, once a complaint or information is filed in court, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court.[25] Trial judges are not bound by the Secretary of Justice's reversal of the prosecutor's resolution finding probable cause. Trial judges are required to make their own assessment of the existence of probable cause, separately and independently of the evaluation by the Secretary of Justice.[26]

On the motion to quash the information
when the accused had not been arrested yet

People v. Mapalao, [27] as correctly argued by the OSG, does not squarely apply to the present case. In that case, one of the accused, Rex Magumnang, after arraignment and during the trial, escaped from detention and had not been apprehended since then. Accordingly, as to him the trial in absentia proceeded and thereafter the judgment of conviction was promulgated. The Court held that since the accused remained at large, he should not be afforded the right to appeal from the judgment of conviction unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested. While at large, the accused cannot seek relief from the court as he is deemed to have waived the same and he has no standing in court.[28] In *Mapalao*, the accused escaped while the trial of the case was on-going, whereas here, the accused have not been served the warrant of arrest and have not been arraigned. Therefore, *Mapalao* is definitely not on all fours with the present case.

Furthermore, there is nothing in the Rules governing a motion to quash [29] which requires that the accused should be under the custody of the law prior to the filing of a motion to quash on the ground that the officer filing the information had no authority to do so. Custody of the law is not required for the adjudication of reliefs other than an application for bail.[30] However, while the accused are not yet under the custody of the law, any question on the jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when the accused invokes the special jurisdiction of the court by impugning such jurisdiction over his person.[31]

At any rate, the accused's motion to quash, on the ground of lack of authority of the filing officer, would have never prospered because as discussed earlier, the Ombudsman's power to investigate offenses involving public officers or employees is not exclusive but is concurrent with other similarly authorized agencies of the government.

On the existence or non-existence of probable cause

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[32] However, in the following exceptional cases, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation.[33]

- To afford adequate protection to the constitutional rights of the accused;
- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- When there is a prejudicial question which is sub judice;
- When the acts of the officer are without or in excess of authority;
- Where the prosecution is under an invalid law, ordinance or regulation;
- When double jeopardy is clearly apparent;
- Where the court has no jurisdiction over the offense;
- Where it is a case of persecution rather than prosecution;
- Where the charges are manifestly false and motivated by the lust for vengeance;
- When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied; [and]
- Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.

There is no clear showing that the present case falls under any of the recognized exceptions. Moreover, as stated earlier, once the information is filed with the trial court, any disposition of the information rests on the sound discretion of the court. The trial court is mandated to independently evaluate or assess the existence of probable cause and it may either agree or disagree with the recommendation of the Secretary of Justice. The trial court is not bound to adopt the resolution of the Secretary of Justice.[34] Reliance alone on the resolution of the Secretary of Justice amounts to an abdication of the trial court's duty and jurisdiction to determine the existence of probable cause.[35]

Considering that the Information has already been filed with the trial court, then the trial court, upon filing of the appropriate motion by the prosecutor, should be given the opportunity to perform its duty of evaluating, independently of the Resolution of the Secretary of Justice recommending the withdrawal of the Information against the accused, the merits of the case and assess whether probable cause exists to hold the accused for trial for kidnapping for ransom.[36]

WHEREFORE, we REMAND this case to the Regional Trial Court, Branch 41, Manila, to independently evaluate or assess the merits of the case to determine whether probable cause exists to hold the accused for trial.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Though the petition was captioned as a "Petition for Certiorari and for Review on Certiorari," the Court shall

treat the present petition as a petition for review on certiorari under Rule 45 of the Rules of Court.

[2]Rollo, pp. 151-162. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong concurring.

[3]Id. at 209-211. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong concurring.

[4]CA rollo, pp. 66-87.

[5] ART. 267. Kidnapping and serious illegal detention. -- Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

- If the kidnapping or detention shall have lasted more than three days.
- If it shall have been committed simulating public authority.
- If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.
- If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above- mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[6] Rollo, pp. 63-68.

[7] Presided by Judge Rodolfo A. Ponferrada.

[8]Rollo, pp. 69-70.

[9]Id. at 72.

[10]Id. at 73.

[11] CA rollo, pp. 134-137.

[12]Rollo, pp. 74-75.

[13]274 Phil. 354 (1991).

[14] SEC. 15. Powers, Functions and Duties. -- The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

x x x

[15] Rollo, pp. 77-82.

[16] Id. at 83-84.

[17] The pertinent portions thereof are:

- 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.

- 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

- Considering that the OFFICE OF THE OMBUDSMAN has jurisdiction over public officers and employees and for effective monitoring of all investigations and prosecution of cases involving public officers and employees, the OFFICE OF THE PROVINCIAL/CITY PROSECUTOR shall submit to the OFFICE OF THE OMBUDSMAN a monthly list of complaints filed with their respective offices against public officers and employees.

[18] G.R. No. 159747, 13 April 2004, 427 SCRA 46, 70, and 74.

[19] Dimatulac v. Villon, 358 Phil. 328, 361 (1998).

[20] G.R. No. 106695, 4 August 1994, 235 SCRA 39, 48.

[21] 324 Phil. 568, 598 (1996).

[22] 235 Phil. 465, 476 (1987).

[23] See Caoili v. Court of Appeals, 347 Phil. 791, 795-796 (1997).

[24] 344 Phil. 207, 228-229 (1997).

[25] Crespo v. Mogul, supra note 22.

[26] Ledesma v. Court of Appeals, supra at 235; Jalandoni v. Drilon, 383 Phil. 855, 872 (2000), citing Crespo v. Mogul, supra note 22.

[27] 274 Phil. 354 (1991).

[28] Id. at 363.

[29] Rule 117 of the Rules of Court.

[30] Miranda v. Tuliao, G.R. No. 158763, 31 March 2006, 486 SCRA 377, 388, 390.

[31] Id. See Santiago v. Vasquez, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633, 643. See also Regalado, Florenz D., Remedial Law Compendium, Vol. II, Tenth Revised Edition, p. 478, where the author stated that by filing a motion to quash on other grounds (such as the lack of authority of the officer filing the information), the accused has submitted himself to the jurisdiction of the court.

[32] Roberts, Jr. v. Court of Appeals, 324 Phil. 568, 615 (1996).

[33] Id. at 615-616, citing *Brocka v. Enrile*, G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183, 188-189. Citations omitted. See also *Samson v. Guingona*, 401 Phil 167, 172 (2000).

[34] *Summerville General Merchandising & Co., Inc. v. Eugenio, Jr.*, G.R. No. 163741, 7 August 2007, 529 SCRA 274, 282, citing *Santos v. Orda, Jr.*, G.R. No. 158236, 1 September 2004, 437 SCRA 504, 516.

[35] Id.

[36] Id. See also *Roberts, Jr. v. Court of Appeals*, *supra* note 32.

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