

ARNEL C. ALCARAZ, PETITIONER, VS. RAMON C. GONZALEZ, RESPONDENT.

G.R. NO. 164715. September 20, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75589, granting the petition for review of the Resolution of the Secretary of Justice in I.S. No. H-03484 for attempted homicide, as well as the Resolution denying the motion for reconsideration thereof.

The Antecedents

At around 10:05 a.m. of August 11, 2000, 61-year-old Ramon C. Gonzalez was driving his Nissan Cefiro car with plate no. UPW-298 along the right outermost lane of the South-Luzon Expressway. He was on his way to Makati City and had just passed the Sucat toll gate.[2]

Atty. Arnel C. Alcaraz, a Customs Collector of the Bureau of Customs, Batangas Port, was driving his Nissan Infiniti car with plate no. CNH-338. He was in the middle lane of the South-Luzon Expressway, between the Sucat and Bicutan Interchange, on his way to Manila from Batangas City. He was armed with a .38 caliber pistol and had with him Mission Order No. 699-2000, to expire on August 21, 2000. Since Alcaraz intended to use the Skyway, he signaled, and proceeded to the right-most lane which was reserved for vehicles taking the Skyway.

Gonzalez, who was on the right-most lane, was forced to swerve his car to the right to avoid colliding with Alcaraz's vehicle and nearly hit the concrete island. Nonplussed, Gonzalez chased after Alcaraz, opened his windows and shouted at Alcaraz, demanding to know why the latter suddenly cut into his lane. Alcaraz retorted that he had signaled that he was swerving to the right. Gonzalez reproved Alcaraz and drove on.

Alcaraz drove his car to Gonzalez's right. Upon nearing an island, Alcaraz raised his pistol towards Gonzalez and fired twice: the first bullet hit the right front window of the vehicle and exited at the left rear door; the second bullet hit the left rear window of Gonzalez's car.[3] Alcaraz hurriedly drove away from the scene, but was intercepted by the PNCC guards at the Skyway toll gate. The guards confiscated from Alcaraz the .38 pistol with 7 live bullets and 3 empty shells.[4]

Gonzalez reported the matter to the Parañaque City Police Station where he gave a statement to the police investigator, and filed a criminal complaint for attempted homicide against Alcaraz.[5]

The PNP Crime Laboratory examined Gonzalez's car to determine the trajectory of the bullets. Report No. PI-46-2000 was prepared in connection with the investigation, with the following findings:

Macro-physical examination conducted on the above-stated car "A" revealed the following results:

- Entrance bullet hole ENT-1 found on the right front door, fired from right front with approximate diameter of 1.25 cms.;

- Entrance bullet hole ENT-2 found at the rear left door, fired from right front measuring 0.5 cm by 1.0 cm.;
- Exit bullet hole Ext-1 with an approximate diameter of 1.1 cm, found on the rear left door fired from right front. xxx

CONCLUSION:

The entrance bullet holes and the exit bullet hole were caused by bullets fired from right, front side of the vehicle. xxx[6]

On August 11, 2000, Alfredo Tan Buraga, Officer-in-Charge of the Parañaque Police Station, filed a criminal complaint for attempted homicide against Alcaraz in the Office of the City Prosecutor of Parañaque City.[7]

After the Office of the City Prosecutor conducted an inquest, an Information for attempted homicide against Alcaraz was filed with the Metropolitan Trial Court (MeTC) of Parañaque City. The inculpatory portion reads:

That on or about the 11th day of August 2000 in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, with intent to kill and without justifiable cause, did then and there, willfully, unlawfully and feloniously attack, assault and shot one Ramon Gonzalez, thus commencing the commission of the crime of Homicide directly by overt acts but nevertheless did not perform all the acts of execution which should have produced the crime of Homicide by reason of cause or causes other than his own spontaneous desistance, that is due to the timely evasion made by the complainant.

CONTRARY TO LAW.[8]

On motion of Alcaraz, the MeTC ordered the City Prosecutor to conduct a preliminary investigation.[9]

In his counter-affidavit, Alcaraz admitted having fired his gun towards the car of Gonzalez. However, he alleged that Gonzalez opened his car window, uttered invectives and waived a dirty finger at him. Gonzalez then proceeded to throw coins at him, hitting him on the chest, and again uttered invectives. He saw Gonzalez reach for a short firearm and aim it at him. This prompted him to take his firearm which was on the passenger seat, and fire it downwards twice onto the right passenger door of Gonzalez's vehicle. Alcaraz claimed that he did not aim his gun at Gonzalez; he had no intention of hitting Gonzalez, and only wanted to scare him.[10] At the police station, Gonzalez identified himself as the brother of Congressman Jose Mari Gonzalez.[11]

In his reply-affidavit,[12] Gonzalez insisted that Alcaraz attempted to kill him. He denied having thrown coins at Alcaraz and that he had a gun at the time. Gonzalez pointed out that Alcaraz's allegation that he was defending himself when he fired his gun was in effect an admission of intent to kill.

The Investigating Prosecutor resolved to maintain his finding of probable cause of attempted homicide against Alcaraz and to retain the Information. Alcaraz filed a motion for reconsideration, and when it was denied, filed a petition for review with the City Prosecutor's Office, Department of Justice. He alleged the following:

- (a) The Honorable Investigating Prosecutor erred in giving serious considerations on complainant's theory on the trajectory of the bullet, as illustrated in his Reply-Affidavit dated 17 January 2001;
- (b) The Honorable Investigating Prosecutor erred in holding that respondent-appellant had the intent to kill the complainant; and
- (c) The Honorable Investigating Prosecutor erred in giving weight and credence on the allegations of complainant relative to the material points of the incident subject of the preliminary investigation.[13]

On November 26, 2001, then Secretary of Justice Hernando Perez issued a Resolution[14] granting the petition and ordering the City Prosecutor to withdraw the Information. The dispositive portion reads:

WHEREFORE, the appeal is hereby GRANTED. The City Prosecutor of Parañaque City is hereby directed to move for the withdrawal of the information for attempted homicide filed against respondent and to report to this Office the action taken within ten (10) days from receipt thereof.

SO ORDERED.

According to the Justice Secretary, Gonzalez failed to prove beyond reasonable that Alcaraz had intended to kill him, thus:

Evidence shows that respondent was provoked by complainant's acts of repeatedly hurling, not only invectives like "putang ina mo" with a dirty finger sign, but also the throwing of coins that hit respondent's face and his lady passenger. The natural consequence was for respondent to retaliate as what had transpired in the instant case. There is no dispute that respondent fired his gun. But as to whether or not he had the intention to kill complainant is a different issue. Respondent's argument that he had no intention of hitting complainant and that his objective was only to scare him finds merit.

As borne by the records, complainant himself was not hit. The gunfire was rather aimed at the passenger side of his car. Neither is there an indication that respondent continued firing his gun. These circumstances tend to negate the presumption that respondent had the intention to kill complainant. It has been held that intent to kill, being an essential element of the offense of frustrated or attempted homicide, must be proved by clear and convincing evidence and with the same degree of certainty as is required of the other elements of the crime. The element of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt (*Mondragon v. People*, 17 SCRA 476). Further, acts susceptible of double interpretation, that is, in favor as well as against the culprit, and which show an innocent as well as a punishable act, must not and cannot furnish grounds by themselves for attempted or frustrated crimes (*Aquino*, Revised Penal Code, 1997 ed., p. 103).

Viewed from the foregoing pronouncements, the circumstance of trajectory of the bullet, from whence inference was made in the assailed resolution, is not well taken.

The element of intent to kill not having been satisfactorily established, and considering that complainant was unscathed, a finding of probable cause against respondent for attempted homicide is difficult to sustain.[15]

Gonzalez filed a motion for reconsideration, which the Undersecretary of Justice denied on January 29, 2003.

Gonzalez then filed a petition for review under Rule 43 of the 1997 Rules of Civil Procedure before the CA, seeking the reversal of the Justice Secretary's Resolution. He claimed that the Secretary acted beyond his authority in finding no probable cause to charge Alcaraz with attempted homicide and for ordering the City Prosecutor to withdraw the Information. He insisted that by invoking self-defense, Alcaraz thereby admitted his intention to kill him (Gonzalez). He claimed that Alcaraz's claim of self-defense should be ventilated during trial on the merits.

In his comment on the petition, Alcaraz averred that the CA had no appellate jurisdiction over the petition, and that Gonzalez had no legal standing to file the petition. He insisted that the remedy from an adverse resolution of the Justice Secretary is to file a petition for certiorari under Rule 65 of the Rules of Court, as amended, grounded on grave abuse of discretion amounting to excess of jurisdiction, not one under Rule 43 of said Rule. He averred that the Justice Secretary is not a quasi-judicial officer under Rule 43 whose resolutions may thus be reviewed by the CA. Alcaraz likewise pointed out that the CA was without power to substitute its own judgment for that of the Justice Secretary regarding the existence or non-existence of probable cause to charge him with attempted homicide.

On March 22, 2004, the CA rendered judgment granting the petition and reversing the assailed resolutions of the Secretary of Justice. The fallo of the decision reads:

WHEREFORE, premises considered, the Resolutions promulgated on November 26, 2001 and January 29, 2003 by the Department of Justice, in I.S. No. H-03484, Criminal Case No. 105593, are hereby REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.[16]

The CA ruled that the petition for review under Rule 43 of the Rules of Court, as amended, was meritorious. The appellate court declared that, based on the evidence on record, there was probable cause to file an Information for attempted homicide against Alcaraz. However, the CA failed to resolve the issue of whether it had appellate jurisdiction over the petition under Rule 43 of the Rules of Court, as amended.

Alcaraz filed a motion for the reconsideration on the following grounds:

- 1.1 The petitioner has no legal standing to file the present petition for review.
- 1.2 The present petition for review filed under Rule 43 of the Revised Rules of Court is an erroneous appeal.
- 1.3 The Metropolitan Trial Court of Parañaque, Branch 77 where the Information for Attempted Homicide against respondent was filed has exclusive and original jurisdiction over the subject matter of the present petition for review.[17]

On July 19, 2004, the CA resolved to deny Alcaraz's motion,[18] holding that his grounds and objections had already been considered and passed upon by it in its decision.[19]

Alcaraz, now petitioner, filed the instant petition for review on certiorari, alleging that

I

THE HONORABLE COURT OF APPEALS HAS NO JURISDICTION TO REVIEW THE RESOLUTIONS OF THE SECRETARY OF JUSTICE IN AN APPEAL BY WAY OF A PETITION FOR REVIEW UNDER RULE 43 OF THE 1997 REVISED RULES OF COURT.

II

THE HONORABLE COURT OF APPEALS HAS NO JURISDICTION TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE AND/OR TO SUBSTITUTE ITS OWN FINDINGS OF PROBABLE CAUSE TO THAT OF THE SECRETARY OF JUSTICE IN AN APPEAL BY WAY OF A PETITION FOR REVIEW UNDER RULE 43 OF THE 1997 REVISED RULES OF COURT.

III.

THE RESPONDENT HAS NO LEGAL STANDING TO APPEAL BY WAY OF A PETITION FOR REVIEW UNDER RULE 43 OF THE 1997 REVISED RULES OF COURT THE RESOLUTION OF THE DEPARTMENT OF JUSTICE TO THE HONORABLE COURT OF APPEALS.[20]

Petitioner avers that respondent, as petitioner in the CA, had no legal standing to appeal the resolutions of the Justice Secretary by way of a petition for review. Moreover, as the private complainant, private respondent was merely a witness in the criminal case in the MeTC. It is only the State through the Office of the Solicitor General (OSG) that has legal standing to appeal or assail the resolutions of the Secretary of Justice.

Petitioner further avers that the Justice Secretary is not a quasi-judicial officer within the context of Rule 43 of the Rules of Court. He reiterates his claim that the CA has no appellate jurisdiction to review the assailed resolutions of the Secretary of Justice by way of a petition for review under Rule 43 of the Rules of Court, the proper remedy being a petition for certiorari under Rule 65. Petitioner cites the rulings of this Court in *Filadams Pharma, Inc. v. Court of Appeals*[21] and *Public Utilities Department of Olongapo City v. Guingona, Jr.*[22] to support his

contention. He further insists that the determination of probable cause for the filing of an Information in court is not a judicial function, but an executive function; hence, the findings and resolutions of the Justice Secretary should prevail over the CA ruling.

In its Comment on the petition, the OSG avers that the CA erred in granting the petition of respondent, since the proper remedy from an adverse resolution issued by the Secretary of Justice is to file a petition for certiorari under Ruler 65 of the Rules of Court, not a petition under Rule 43.

By way of Comment, respondent maintains that he had the legal standing to file the petition with the CA and that the State is merely a nominal party. He avers that the Secretary of Justice acted as a quasi-judicial officer when he reviewed the resolutions of the City Prosecutor; hence, the same may be reviewed by the CA via petition for review under Rule 43 of the Rules of Court. In any event, respondent asserts, technicalities should be ignored, and the CA should not be faulted for taking cognizance of and resolving his petition on its merits.

In reply, petitioner avers that conformably with the resolution of the Secretary of Justice, the City Prosecutor had filed a motion to withdraw the information in the MeTC, and the court had granted the motion per its Order dated March 7, 2003. He points out that respondent had not appealed the said order of the trial court.[23]

The Ruling of the Court

The petition is meritorious.

The threshold issue is whether the petition for review under Rule 43 of the Rules of Court was the proper remedy of respondent.

We agree with petitioner's contention that respondent resorted to an improper remedy when he filed a petition for review under Rule 43 of the Rules of Court, instead of filing a petition for certiorari under Rule 65.

It bears stressing that in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.[24]

The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor.[25] Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for certiorari under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.[26]

It bears stressing that the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final. Under the 1993 Revised Rules on Appeals (now the 2000 National Prosecution Service Rules on Appeals), resolutions in preliminary investigations or reinvestigations from the Justice Secretary's resolution, except the aggrieved party, has no more remedy of appeal to file a motion for reconsideration of the said resolution of such motion if it is denied by the said Secretary. The remedy of the aggrieved party is to file a petition for certiorari under Rule 65 of the Rules of Court since there is no more appeal or other remedy available in the ordinary course of law.[27]

In the present case, respondent filed a petition for review under Rule 43 of the Rules of Court, assailing the resolutions of the Justice Secretary. Instead of dismissing the petition, however, the CA gave due course to it and

thereafter granted the petition, on its finding that the Justice Secretary erred in reversing the resolution of the Investigating Prosecutor which found probable cause against petitioner for attempted homicide. Patently, the ruling of the CA is incorrect.

IN VIEW OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 75589 are NULLIFIED.

SO ORDERED.

Panganiban, C. J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Eugenio S. Labitoria (retired) and Rosmari D. Carandang, concurring; rollo, pp. 206-212.

[2] Records,, p. 165.

[3] Id. at 40.

[4] Rollo, p. 78.

[5] Id.

[6] Id. at 167.

[7] Id. at 78.

[8] Id. at 79.

[9] Id. at 87-89.

[10] Id. at 90-95.

[11] Id. at 94.

[12] Id. at 96-100.

[13] Id. at 124.

[14] Id. at 40-43.

[15] Id. at 42.

[16] Id. at 212.

[17] Id. 215.

[18] Id. at 232.

[19] Id.

[20] Id. at 19-20.

[21] G.R. No. 132422, March 30, 2004, 426 SCRA 460, 466.

[22] 417 Phil. 798, 805 (2001).

[23] Rollo, pp. 254-255.

[24] Metropolitan Bank and Trust Company v. Tonda, 392 Phil. 797, 814 (2000).

[25] Public Utilities of Olongapo City v. Guingona, Jr., supra note 22, at 804.

[26] Metropolitan Bank and Trust Company v. Tonda, supra, at 808.

[27] Filadams Pharma, Inc. v. Court of Appeals, supra note 21, at 467.

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