

**ANTONIO B. MONFORT III AND ILDEFONSO B. MONFORT,
PETITIONERS, VS. MA. ANTONIA M. SALVATIERRA, PAUL MONFORT,
RAMON H. MONFORT, JACQUELINE M. YUSAY, YVETTE M.
BENEDICTO, ESTER S. ...**

G.R. NO. 168301. March 05, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this Petition for Review[1] on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, petitioners Antonio B. Monfort III and Ildefonso B. Monfort seek to set aside the Decision dated 28 January 2005[2] and Resolution dated 26 May 2005[3] of the Court of Appeals in CA-G.R. SP No. 67109. In its Decision and Resolution, the Court of Appeals affirmed the Resolutions dated 11 October 2000[4] and 15 August 2001,[5] of the Secretary of Justice which dismissed the petitioners' criminal complaint for perjury against private respondents Ma. Antonia M. Salvatierra, Paul Monfort, Ramon H. Monfort, Jacqueline M. Yusay, Yvette M. Benedicto and Ester S. Monfort.

The factual antecedents are as follows:

Petitioners are children of the late Antonio H. Monfort, Jr., one of the original stockholders/incorporators of the Monfort Hermanos Agricultural Development Corporation (MHADC).[6] On 28 October 1998, petitioners filed a letter-complaint for perjury under Article 183 of the Revised Penal Code before the City Prosecutor of Cadiz against private respondents. The case was docketed as I.S. No. 8009. In the said complaint, petitioners claimed that the private respondents made false statements in their respective counter-affidavits dated 11 June 1998 which the latter had executed and submitted to the City Prosecutor of Cadiz in connection with another complaint for perjury, docketed as I.S. No. 7883, earlier filed by the petitioners against the private respondents. The alleged false statements referred to the declarations of the private respondents that the 1996 annual stockholders' meeting of the MHADC was held on 16 October 1996, and that they were elected as board directors of the MHADC during the same meeting. Petitioners insisted that the 1996 annual stockholders' meeting of the MHADC was held, not on 16 October 1996, but on 27 November 1996 as stated in the 1996 General Information Sheet (GIS) accomplished by the MHADC and submitted to the Securities and Exchange Commission (SEC), Iloilo Extension Office. Further, there is nothing in the 1996 GIS of the MHADC which states that an election of the board of directors of the MHADC took place on 16 October 1996.[7]

Subsequently, private respondents filed their joint counter-affidavits dated 9 December 1998 in I.S. No. 8009 before the City Prosecutor of Cadiz. They alleged that they are stockholders of record of the MHADC; that a stockholders' meeting of the MHADC was held on 16 October 1996 where they were elected as board directors of MHADC; that the MHADC's corporate accountant, Litonjua, Desabelle and Associates (LDA), was responsible for the preparation of the MHADC's GIS; that the LDA made erroneous statements in the 1996 GIS of MHADC; that the erroneous statements refer to the date of the MHADC's annual stockholders' meeting and the persons

composing the MHADC's board of directors; that the LDA had admitted having committed such honest error; that the LDA had rectified the same by submitting a letter to the SEC informing the latter that the annual stockholders' meeting of the MHADC for the year 1996 was held on 16 October 1996 and not on 27 November 1996; that what transpired on 27 November 1996 was not the annual stockholders' meeting of the MHADC but merely a special meeting of the board of directors thereof; and, that, the private respondents were elected as board directors of the MHADC during the annual stockholders' meeting on 16 October 1996.[8]

Private respondents thus argue that they cannot be held liable for perjury since one of the elements of perjury under Article 183 of the Revised Penal Code is that the assertion of falsehood must be willful and deliberate; that the terms willful and deliberate imply malice and evil intent in asserting falsehood; and that this element is lacking in the case at bar.[9]

Thereafter, Investigating Prosecutor Abraham E. Tionko (Investigator Tionko) issued a Resolution dated 14 April 1999 in I.S. No. 8009 dismissing the letter-complaint for perjury of the petitioners for lack of probable cause.[10] Investigator Tionko noted that the statements in the 1996 GIS of the MHADC are indeed erroneous. The 1996 GIS stated that the stockholders' meeting and election of the board of directors took place on 27 November 1996. If such information were true and correct, then according to Investigator Tionko, it would have been impossible for some of the board directors to be elected as such on 27 November 1996 since they were already deceased at that time.[11] Moreover, if the 1996 annual stockholders' meeting of MHADC was indeed held on 27 November 1996 which fell on a Wednesday, it would have been inconsistent with the by-laws of the MHADC which states that the annual stockholders' meeting of the MHADC shall be held on the last Thursday of November, which, according to the 1996 calendar, fell on 28 November 1996.

As to the matter of whether or not the stockholders may hold their annual meeting on a date other than that specified in its by-laws, Investigator Tionko opined that such is not within the province of his office to rule.[12]

He, thereafter, made the following findings: that it was not impossible for the MHADC stockholders to have conducted their annual meeting on 16 October 1996; that there would have been willful and deliberate assertion of falsehood on the part of the private respondents only if no error was committed in the preparation of the 1996 GIS of MHADC; that private respondent Ramon H. Monfort was not aware of the said errors at the time he subscribed and swore to the correctness of the 1996 GIS of MHADC as Vice-President thereof; that upon the discovery of the errors, the LDA sent a letter to the SEC providing the latter with the correct information; that such should be considered as mere negligence and imprudence on the part of private respondent Ramon H. Monfort; and that the crime of perjury cannot be committed by negligence or imprudence. The dispositive portion of Investigator Tionko's Resolution states:

WHEREFORE, the undersigned believes there is no probable cause to support a finding of perjury against all of the respondents and this complaint is hereby dismissed.[13]

Petitioners appealed the aforementioned Resolution to the Office of the Regional State Prosecutor for Region VI. In his Resolution dated 19 November 1999, Regional State Prosecutor Vicente E. Aragona (Prosecutor Aragona) denied due course to petitioners' appeal as the same was filed out of time.[14] Petitioners filed a motion for reconsideration but the same was dismissed by Prosecutor Aragona in his Resolution dated 22 December 1999.[15] Prosecutor Aragona sustained the claim of the private respondents that the annual stockholders meeting of the MHADC was held on 16 October 1996 at Agmac Building, Bacolod City, where they were elected as board directors since this is supported by evidence on record consisting of the notices of stockholders' meeting and registry return receipt.[16] He also affirmed that patent errors were committed in the preparation of the 1996 GIS of the MHADC. Pertinent portions of the 22 December 1999 Resolution of Prosecutor Aragona reads:

We then ruled and so rules here, that an erroneous document is incorrect and therefore not the truth. It cannot be used as basis to charge the respondents for Perjury, for the simple reason that it is not an evidence that they lied under oath. In fact, it is an evidence not only of it being an incorrect document but also of the fact that the November 27, 1996 meeting written in it was a mistake and that the dead persons listed as elected officers in that meeting is likewise a mistake. This evidence has no probative value to establish prima facie case for perjury because of its nature as being worthless due to its inherent incredibility to establish that November 27, 1996 is the true date of the Annual Stockholders' Meeting of the Monfort Hermanos Agricultural Development Corporation.

In view of the foregoing, the appeal should be, as it is hereby dismissed.[17]

Petitioners, then, appealed to the Secretary of Justice. Finding no reversible error in Prosecutor Aragona's Resolution dated 22 December 1999, Undersecretary of Justice Regis V. Puno dismissed petitioners' appeal in his Resolution dated 11 October 2000,[18] to wit:

This resolves the appeal from the resolution of the Regional State Prosecutor, Region VI, Iloilo City in the above-entitled case dismissing the complaint against Ma. Antonia M. Salvatierra, et. al. for perjury.

Section 9 of Department Order No. 223 dated June 30 1993, as amended, (now Section 12 in relation to Section 7 of Department Circular No. 70 dated 3 July 2000), prescribing rules on appeals from resolution in preliminary investigations provides that the Secretary of Justice may, motu proprio, dismiss outright an appeal if there is showing of any reversible error in the questioned resolution. We have carefully examined the record of the case and we found no such error committed by the prosecutor that would justify a reversal of his resolution, which is in accord with the law and evidence on the matter.

WHEREFORE, premises considered, the appeal is hereby DISMISSED.[19]

Petitioners filed a motion for reconsideration of Undersecretary Puno's Resolution dated 11 October 2000 but this was denied in the Resolution dated 15 August 2001 of Undersecretary of Justice Manuel A.J. Teehankee since no new matter was raised to warrant the review of the same,[20] viz:

A perusal of the motion shows no new matter which was not taken into consideration in our review of the case. Hence, we find no compelling reason to alter or modify our resolution.

WHEREFORE, the motion for reconsideration is hereby DENIED with finality.[21]

Petitioners appealed the resolutions of the Secretary of Justice dated 11 October 2000 and 15 August 2001, respectively, to the Court of Appeals. On 28 January 2005, the Court of Appeals rendered its Decision affirming the said resolutions.[22] It ruled that the Secretary of Justice did not commit grave abuse of discretion since its non-finding of probable cause for perjury against private respondents is based on law, jurisprudence and evidence on records. It also held that the private respondents had sufficiently established the fact that a stockholders' meeting of the MHADC actually took place on 16 October 1996, and that they were elected during the said meeting as board directors. It further stated that willful and deliberate assertion of falsehood, as one of the elements of perjury, is not present in the instant case.[23] The fallo of the assailed Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the Resolutions dated October 11, 2000 and August 15, 2001 respectively, issued by the public respondent Secretary of Justice.[24]

Petitioners filed a Motion for Reconsideration but the same was denied by the Court of Appeals in its Resolution dated 26 May 2005.[25]

Petitioners filed the present petition raising the sole issue of whether or not the Court of Appeals erred in

affirming the findings of the Secretary of Justice that there is no probable cause to indict the private respondents for the crime of perjury.[26]

According to the petitioners, the insistence of the private respondents that the annual stockholders' meeting of MHADC took place on 16 October 1996, and that they were elected during the said meeting as board directors constitute willful and deliberate assertion of a falsehood because it is not in harmony with the constitution and by-laws of MHADC which provides that the annual stockholders' meeting and the election of board directors shall be held every last Thursday of November for each year. They stressed the fact that the date 16 October 1996 is not the last Thursday of November in the year 1996. They also claimed that the notices of meeting dated 1 October 1996 received by the private respondents are "incompetent" to prove that the annual stockholders' meeting and the election of directors of the MHADC took place on 16 October 1996. Further, the intent of the private respondents to commit a willful and deliberate assertion of falsehood is evident in the 1996 GIS of the MHADC which does not specify that an election of board directors took place on 16 October 1996.[27]

Petitioners also averred that the correction of the alleged erroneous entries in the 1996 GIS of MHADC was made by the LDA, MHADC's corporate accountant, only after the lapse of two years from the execution of the said document. They argued that the same was a futile attempt on the part of the private respondents to escape criminal liability since: a) at the time the corrections were made, they had already charged private respondent Ramon H. Monfort with perjury and falsification of private document for including in the 1996 GIS of the MHADC the names of stockholders who were already deceased as elected board directors of MHADC;[28] b) the alleged errors in the 1996 GIS of the MHADC, particularly in the composition of the alleged elected board of directors, is belied by the 1997 GIS of MHADC filed by private respondent Ramon H. Monfort which reiterated the names of the deceased stockholders as elected directors of MHADC; this is not just one mistake but two mistakes already; c) there was ill-motive on the part of the private respondents when it sent, through LDA, a letter to the SEC to correct the alleged errors because at the time such letter was received by the SEC, the City Prosecutor of Cadiz had already issued a resolution in I.S. No. 7883 finding probable cause for perjury against private respondents; and d) at the time of the correction of errors, a total of six or more criminal cases for perjury were already filed by the petitioners against private respondents and some are still pending resolution.[29]

Petitioners further asseverated that the private respondents' statements in their respective counter-affidavits dated 11 June 1998 in I.S. No. 7883 that they were elected board directors during the 16 October 1996 annual stockholders' meeting show willful and deliberate assertion of falsehood since the private respondents had made these same statements as their bases in filing civil cases for forcible entry and delivery of personal property against petitioners which cases, however, were eventually dismissed by this Court in G.R. No. 152542 and No. 155472.[30] They posited that this Court had dismissed the civil cases as the private respondents failed to establish the fact that they were duly elected as board directors of MHADC and, as such, were not authorized to file the said cases. Based on these premises, petitioners concluded that there is more than enough evidence to support the finding of probable cause for perjury against private respondents.[31]

These contentions are devoid of merit.

It should be emphasized at the outset that the function of a preliminary investigation is to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[32] It is through the conduct of a preliminary investigation that the prosecutor determines the existence of a probable cause that would warrant the prosecution of a case.[33] Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the private respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and

prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief.[34]

In this proceeding, the prosecutor is vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of corresponding information.[35] If the prosecutor found probable cause to indict the respondent for a criminal offense, it is his duty to file the corresponding information in court.[36] However, it is equally his duty not to prosecute when after an investigation, the evidence adduced is not sufficient to establish a prima facie case.[37] We explained the rationale in the case of *People v. Pineda*,[38] thus:

A prosecuting attorney, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But we must have to recognize that a prosecuting attorney should not be unduly compelled to work against his conviction. In case of doubt, we should give him the benefit thereof. A contrary rule may result in our courts being unnecessarily swamped with unmeritorious cases. Worse still, a criminal suspect's right to due process - the sporting idea of fair play - may be transgressed. x x x

Perjury is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter.[39] Article 183 of the Revised Penal Code states the definition of and penalty for perjury, thus:

Art. 183. False testimony in other cases and perjury in solemn affirmation. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly make untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned made in this and the three preceding articles of this section shall suffer the respective penalties provided therein.

As can be gleaned from the foregoing, the elements of perjury are as follows:

- (a) That the accused made a statement under oath or executed an affidavit upon a material matter.
- (b) That the statement or affidavit was made before a competent officer, authorized to receive and administer oath.
- (c) That in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood.
- (d) That the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.[40]

The third element of perjury requires that the accused had willfully and deliberately asserted a falsehood. A mere assertion of a false objective fact is not sufficient. The assertion must be deliberate and willful.[41]

In the instant case, the petitioners failed to establish the fact that the private respondents made a willful and deliberate assertion of falsehood in their counter-affidavits dated 11 June 1998.

Private respondent Ramon H. Monfort had sufficiently and reasonably explained the circumstances surrounding the preparation and his signing of the erroneous statements in the 1996 GIS of the MHADC. He narrated that as Vice-President of the MHADC, he signed and certified the same under oath; that he was not, however, aware of the erroneous statements therein at the time when he signed it; that it was LDA as MHADC's corporate accountant which had solely prepared the 1996 GIS of the MHADC; that he always relied on the accuracy of

LDA; that he hastily signed it since, at that time, the LDA representative was in a hurry to beat the deadline in submitting the same to the SEC; that after being informed of the erroneous statements, the LDA sent a letter to the SEC informing the latter of the mistakes and supplying the correct informations therein; that the erroneous statements were due to the oversight of the LDA; and, that he admitted that he was negligent in not carefully reading and analyzing the statements therein.[42]

The naïve reliance of the private respondents on the foregoing circumstances in executing their respective counter-affidavits dated 11 June 1998 negates willful and deliberate assertion of falsehood. Perjury being a felony by dolo, there must be malice on the part of the accused.[43] Willfully means intentionally, with evil intent and legal malice, with consciousness that the alleged perjurious statement is false with the intent that it should be received as a statement of what was true in fact. It is equivalent to "knowingly." "Deliberately" implies "meditated" as distinguished from "inadvertent acts." It must appear that the accused knows his statement to be false or is consciously ignorant of its truth.[44]

In this case, the private respondents believed in good faith that, based on the above-explained events, their statements in their respective counter- affidavits dated 11 June 1998 are true and correct. Good faith or lack of malice is a valid defense vis-a-vis the allegation of deliberate assertion of falsehood in perjury cases.[45]

It should also be borne in mind that perjury cannot be willful where the oath is according to belief or conviction as to its truth. Bona fide belief in the truth of a statement is an adequate defense.[46] The private respondents had consistently claimed that the 1996 GIS of the MHADC is erroneous on its face. They have maintained all along their stand that the annual stockholders meeting of the MHADC was held on 16 October 1996 and not on 27 November 1996. They also submitted documentary evidence to prove that the annual stockholders' meeting took place on 16 October 1996, and that the LDA had already communicated to the SEC the mistakes and corrections in the 1996 GIS of the MHADC.[47] In addition thereto, they also submitted a letter coming from the SEC which acknowledged the corrections therein and had noted that the same now form part of the records of the MHADC.[48]

Further, the Secretary of Justice had found that the 1996 GIS of the MHADC is patently erroneous. It concluded that the same is worthless and has no probative value in evidence because it does not establish the fact that the true date of the annual stockholders' meeting for the year 1996 took place on 27 November 1996. This finding was sustained by the Court of Appeals in its Decision dated 28 January 2005.

As a general rule, this Court will not interfere in the conduct of preliminary investigations and leave to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against an offender.[49] As an exception, however, this Court may inquire into the determination of probable cause during the preliminary investigation if, based on the records, the prosecutor committed grave abuse of discretion.[50] In the case at bar, the City Prosecutor of Cadiz, the Regional State Prosecutor for Region VI, and the Secretary of Justice had consistently ruled that there is no probable cause to indict the private respondents for the crime of perjury. We find no grave abuse of discretion or manifest error on their part considering the fact that their non-finding of probable cause is supported by the evidence on record. It is well to state, too, that the resolution of the Secretary of Justice declaring the absence or existence of a probable cause and affirmed by the Court of Appeals is accorded high respect and generally conclusive on this Court.[51] We find no exceptional reasons to deviate from this principle.

The pronouncements of this Court in G.R. No. 152542 and No. 155472[52] do not automatically imply that there is sufficient evidence or probable cause to indict the private respondents for the crime of perjury. It should be

underscored that in G.R. No. 152542 and No. 155472, there is no finding with regard to the correct date of the 1996 annual stockholders' meeting and the election of the board of directors as to bind this Court in the Petition at bar.

WHEREFORE, the instant petition is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 67109 dated 28 January 2005 and 26 May 2005, respectively, are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.
Callejo, Sr., J., on leave.

[1] Rollo, pp. 3-20.

[2] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinado E. Villon and Ramon M. Bato, Jr., concurring; rollo, pp. 163-172.

[3] Id. at 175-176.

[4] Penned by Undersecretary of Justice Regis V. Puno; id. at 320-321.

[5] Penned by Undersecretary of Justice Manuel A.J. Teehankee; id. at 328.

[6] Records of the Department of Justice, Exh. D.

[7] Id. at 3-30.

[8] Id. at 44-46.

[9] Id.

[10] Id. at 61-63.

[11] The following MHADC stockholders passed away during the 1980's: Antonio H. Monfort, Jr., Jesus Antonio H. Monfort, Francisco H. Monfort, and Joaquin H. Monfort.

[12] Rollo, pp. 61-63.

[13] Id.

[14] Id. at 93.

[15] Id. at 94-96.

[16] Id.

[17] Id.

[18] Id. at 320-321.

[19] Id.

[20] Id. at 328.

[21] Id.

[22] Id. at 163-172.

- [23] Id.
- [24] Id.
- [25] Id. at 175-176.
- [26] Id. at 12.
- [27] Id. at 13-14.
- [28] Id. at 61-63.
- [29] Id. at 15-17.
- [30] Promulgated 8 July 2004.
- [31] Rollo, pp. 17-19.
- [32] Rule 112, Section 1, Revised Rules of Criminal Procedure.
- [33] *Alonzo v. Concepcion*, A.M. No. RTJ-04-1879, 17 January 2005, 448 SCRA 329, 337.
- [34] *Villanueva v. Secretary of Justice*, G.R. No. 162187, 18 November 2005, 475 SCRA 495, 511.
- [35] *Zulueta v. Nicolas*, 102 Phil. 944, 946 (1958).
- [36] Rollo, pp. 15-17.
- [37] Id.
- [38] G.R. No. L-26222, 21 July 1967, 20 SCRA 748, 755.
- [39] *Villanueva v. Secretary of Justice*, supra note 34 at 513.
- [40] *Diaz v. People*, G.R. No. 65006, 31 October 1990, 191 SCRA 86, 93.
- [41] Id.
- [42] Rollo, pp. 371-373.
- [43] Id.
- [44] Id. at 513-514.
- [45] *Acuña v. Deputy Ombudsman for Luzon*, G.R. No. 144692, 31 January 2005, 450 SCRA 232, 245.
- [46] Rollo, p. 514.
- [47] Id. at 44-55 and 371-382.
- [48] Records of the Department of Justice, Exh. 3.
- [49] *Punzalan v. Dela Pena*, G.R. No. 158543, 21 July 2004, 434 SCRA, 601, 611.
- [50] *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470.
- [51] Rollo, p. 512.
- [52] Id. at 150-161.

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