

MARILYN H. CO AND WILSON C. CO, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, HON. EUFRONIO K. MARISTELA, PRESIDING JUDGE, REGIONAL TRIAL COURT, SAN JOSE, CAMARINES SUR, BRANCH ...

G.R. NO. 168811. November 28, 2007

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] assailing the 3 January 2005 Decision[2] and 30 June 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 82155.

The Antecedent Facts

On 15 May 2001, at around 5:00 p.m., Miguel Antonio Francia (Miguel) was shot dead in front of his house in Caramoan, Camarines Sur by Sgt. Roberto Reyes[4] (Sgt. Reyes), a member of the Philippine Army. Jocelyn Francia (Jocelyn), Miguel's widow, filed a complaint for Murder against Sgt. Reyes and John Does. Mayor Marilyn H. Co (Mayor Co) and Wilson C. Co (petitioners)[5] were included as principals by induction. The motive for the killing was allegedly Miguel's shift of loyalty to Mayor Co's political opponent. Sgt. Reyes and the John Does in the complaint were allegedly Mayor Co's bodyguards.

While Miguel was at the Caramoan Municipal Hospital, Sgt. Reyes, SPO2 Ramil Arañas (SPO2 Arañas), and a John Doe allegedly entered the Francias' house against Jocelyn's will. They searched for papers and other effects, and caused chaos and disarray in the house. Accordingly, Jocelyn also filed a complaint for Violation of Domicile against Sgt. Reyes, SPO2 Arañas, and John Doe.

The accused alleged that Miguel was drunk and unruly, and indiscriminately fired his 9 mm pistol. Sgt. Reyes, who was at the vicinity, accosted Miguel and fired a warning shot. However, Miguel pointed his pistol at Sgt. Reyes. Sgt. Reyes was forced to shoot Miguel who was hit at his right thigh. Sgt. Reyes and his companions brought Miguel to the Caramoan Municipal Hospital where he died due to loss of blood.

After the preliminary investigation, the Office of the Provincial Prosecutor of San Jose, Camarines Sur issued a Joint Resolution[6] dated 30 August 2001, as follows:

WHEREFORE, in the light of the foregoing consideration, let the case against SPO2 Ramil Arañas, Roberto Reyes, Mayor Marilyn Co, Wilson Co and other John Does for Murder be dismissed for lack of probable cause and an information for Homicide be filed against Sgt. Gilbert Reyes, P.A.[,] with the proper court[,], his allegations of self-defense being evidentiary in nature and another information for Violation of Domicile against Sgt. Gilbert Reyes and another John Doe be filed with the proper court, as the case against SPO2 Ramil Arañas, for lack of probable cause[,], is hereby dismissed.

SO RESOLVED.[7]

Jocelyn filed a petition for review before the Department of Justice (DOJ). In a Resolution[8] promulgated on 25 June 2002, the DOJ resolved:

WHEREFORE, the assailed resolution is hereby MODIFIED. The Office of the Provincial Prosecutor of Camarines Sur is hereby directed to file the Information for murder against respondents SPO2 Ramil Arañas, Sgt. Gilbert Reyes, Mayor Marilyn Co, Wilson Co and John Does, and another information for violation of domicile against respondents SPO2 Ramil Arañas, Sgt. Gilbert Reyes and a certain John Doe. The Provincial Prosecutor is further directed to report to this Office the action taken within ten (10) days from receipt thereof.

SO ORDERED.[9]

On 2 July 2002,[10] Provincial Prosecutor Agapito Rosales filed a new Information for Murder against the accused.

The accused filed a motion to suspend proceedings pending the motion for reconsideration of the DOJ's 25 June 2002 Resolution. Jocelyn, through a private prosecutor, filed a motion for issuance of warrants of arrest against the accused. Jocelyn thereafter filed a motion for inhibition of Judge Alfredo Cabral (Judge Cabral) for loss of trust and confidence due to the delay in the issuance of the warrants of arrest. Judge Cabral granted Jocelyn's motion and the cases were transferred to the sala of Judge Eufonio K. Maristela of the Regional Trial Court of San Jose, Camarines Sur, Branch 30 (trial court).

In an Order[11] dated 13 September 2002, the trial court denied the motion to suspend proceedings as well as the motion for the issuance of warrants of arrest. Instead, the trial court set the cases for preliminary investigation of Jocelyn and her witnesses to determine probable cause.

During the scheduled preliminary investigation on 23 September 2002, only Dr. Minerva Balmacea-Aguirre of Caramoan Municipal Hospital appeared. Jocelyn and her witnesses did not appear for fear for their lives. The private prosecutor moved for the suspension of the judicial determination of probable cause as he was filing a petition for change of venue. In an Order dated 14 October 2002, the trial court held in abeyance the presentation of additional evidence for judicial determination of probable cause. However, this Court subsequently denied the private prosecutor's motion for change of venue.

In an Order dated 19 May 2003,[12] the trial court held that no probable cause exists against the accused for the crime of Murder. The trial court dismissed the Information for Murder but upheld the Information for Homicide against Sgt. Reyes. The trial court issued another warrant of arrest against Sgt. Reyes.

The private prosecutor moved for reconsideration of the 19 May 2003 Order. On 13 August 2003,[13] the trial court granted the motion and set the presentation of additional evidence for judicial determination of probable cause on 29 August 2003. Meanwhile, on 12 August 2003, Jocelyn executed an Affidavit of Retraction/Desistance absolving the accused, particularly petitioners, from liability for Miguel's death. On 28 August 2003, the private prosecutor filed an Omnibus Motion to Admit Affidavit of Desistance of Private Complainant Jocelyn Francia and to Dismiss the Case. On 29 August 2003, neither the government nor the private prosecutor appeared at the scheduled hearing. None of the witnesses stated in the subpoena appeared.

In an Order dated 21 October 2003,[14] the trial court dismissed the Information for Murder against SPO2 Arañas, Sgt. Reyes, John Does, and petitioners for lack of probable cause. The trial court again sustained the Information for Homicide against Sgt. Reyes. The private prosecutor filed a motion for reconsideration. In its Order dated 17 December 2003,[15] the trial court denied the motion.

Jocelyn, joined by Miguel's sons Antonio Francia II and Mark Anthony Francia (collectively, the heirs of Miguel), filed a petition for certiorari before the Court of Appeals assailing the 21 October 2003 Order of the trial court. The heirs of Miguel alleged that the 21 October 2003 Order was issued despite Jocelyn's submission of an Affidavit withdrawing her Affidavit of Desistance and despite her lack of affirmation in open court of the Affidavit of Desistance. The heirs of Miguel further alleged that the trial court committed grave abuse of discretion in dismissing the Information for Murder for lack of probable cause to sustain the charges against the accused.

The Ruling of the Court of Appeals

In its 3 January 2005 Decision, the Court of Appeals set aside the trial court's 21 October 2003 and 17 December 2003 Orders.

The dispositive portion of the 3 January 2005 Decision reads:

WHEREFORE, premises considered, the instant petition is impressed with merit. Perforce, the questioned Orders dated October 21, 2003 and December 17, 2003 are hereby reversed and set aside for being issued with grave abuse of discretion amounting to lack and/or in excess of jurisdiction. The respondent court, therefore, is hereby ordered to enforce the Resolution of the Secretary of Justice promulgated on 25 June 2002 (Annex I, pp. 153 to 161, Rollo) and in pursuance thereto, to re-admit the information filed by Provincial Prosecutor Agapito B. Rosales dated July 4, 2002 (Annex "J", p. 162, Rollo).

SO ORDERED.[16]

The Court of Appeals distinguished between a preliminary investigation for the determination of sufficient ground for the filing of information on one hand, and preliminary examination for the determination of probable cause for the issuance of a warrant of arrest on the other. The Court of Appeals ruled that in this case, the incident before the trial court was the determination of probable cause for the issuance of warrants of arrest against the accused. The trial court was not tasked to determine whether there was a probable cause to prosecute the accused for the crime of Murder. The determination of probable cause to prosecute the accused for Murder falls within the jurisdiction of the prosecutor. This was already settled with the issuance of the 25 June 2002 Resolution by the Secretary of Justice and with the filing of an Information for Murder before the trial court. The Court of Appeals ruled that the trial court went beyond its jurisdiction when it assumed the duty and function of the prosecutor.

Petitioners filed a motion for reconsideration. In its 30 June 2005 Resolution, the Court of Appeals denied the motion.

Hence, petitioners came to this Court, raising the following arguments:[17]

- The Court of Appeals erred when it reversed the order of the trial court considering that there was clearly no probable cause for the issuance of warrants of arrest against petitioners.
- The Court of Appeals committed a reversible error when it found that the trial court arrogated unto itself the functions of the public prosecutor.

The Issue

The sole issue in this case is:

Whether the Court of Appeals committed a reversible error in reversing the trial court's 21 October 2003 Order which dismissed the Information for Murder against petitioners, SPO2 Arañas, Sgt. Reyes, and John Does for lack of probable cause.

The Ruling of this Court

The petition has no merit.

Preliminary Investigation Should be Distinguished from Preliminary Examination

In this case, what was brought before the trial court was the preliminary examination. The trial court's jurisdiction is limited to the determination of whether there is probable cause for the issuance of warrants of arrest against the accused. Instead, the trial court assumed the function of the prosecutor by determining whether there was probable cause for the filing of the information for Murder.

In *Salta v. Court of Appeals*,^[18] the Court already ruled that Section 2 of the 1985 Rules on Criminal Procedure no longer authorizes Regional Trial Court Judges to conduct preliminary investigations. In *Castillo v. Villaluz*,^[19] the Court reiterated:

Judges of Regional Trial Courts (formerly Court of First Instance) no longer have authority to conduct preliminary investigations. That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964, was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985, which deleted all provisions granting that power to said Judges. x x x

The 1988 Amendments to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988, did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.

This is not to say, however, that somewhere along the line RTC Judges also lost the power to make a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest (or search warrant). Such a power – indeed, it is as much a duty as it is a power – has been and remains vested in every judge by the provision in the Bill of Rights in the 1935, the 1973 and the present (1987) Constitutions securing the people against unreasonable searches and seizures, thereby placing it beyond the competence of mere Court rule or statute to revoke. The distinction must, therefore, be made clear while an RTC Judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for the filing of a criminal complaint or information, he retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest. x x x.^[20]

The Court again reiterated this rule in *People v. Inting*^[21] where we further explained:

Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial – is the function of the Prosecutor.

x x x

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge. x x x^[22]

Clearly, the trial court committed grave abuse of discretion in assuming the function of the prosecutor. It should

have limited itself to the determination of the existence of probable cause for the purpose of issuing warrants of arrest against the accused. The Court of Appeals did not err in reversing the trial court's Order which dismissed the information for Murder filed against the accused.

Petitioners' Arguments are Evidentiary in Nature

Petitioners further allege that the Court of Appeals erred in reversing the order of the trial court because there is clearly no probable cause for the issuance of the warrants of arrest against them. Petitioners allege that the admitted facts show that their co-accused who are law enforcers were performing their functions to maintain order and enforce the law. Petitioners further allege that the physical evidence, consisting of the injuries suffered by Miguel, eliminates the element of treachery. Petitioners allege that the location of the wound totally negates intent to kill. Petitioners also allege that there is no evidence of abuse of superior strength. The fact that Miguel was taken to the hospital only 15 minutes after he was shot was nobody's fault and should not be taken as an attempt to hide intent to kill. Finally, petitioners allege that the only evidence linking them to the crime is hearsay in character.

Again, the trial court went beyond the determination for the issuance of warrants of arrest. The trial court made a judicial determination of probable cause for the filing of an information against the accused. Petitioners' arguments are matters of defense and are evidentiary in nature. They are best left for the trial court to resolve after a full-blown trial on the merits.[23]

WHEREFORE, we DENY the petition. We AFFIRM the 3 January 2005 Decision and 30 June 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 82155.

SO ORDERED.

Sandoval-Gutierrez, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

* As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 65-83. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Eugenio S. Labitoria and Rosalinda Asuncion-Vicente, concurring.

[3] Id. at 84-85.

[4] Also referred to as Sgt. Gilbert Reyes.

[5] Sgt. Reyes, SPO2 Arañas, John Does, and petitioners are collectively referred to as the accused in this Decision.

[6] Rollo, pp. 111-130. Signed by 3[rd] Asst. Provincial Prosecutor and OIC Esperidion R. Solano, with 2[nd] Asst. Provincial Prosecutor Eulogio I. Prima recommending approval. Provincial Prosecutor Agapito B. Rosales approved and signed the Joint Resolution.

[7] Id. at 130.

[8] Id. at 180-187.

[9] Id. at 187.

- [10] Id. at 189. 5 July 2002 in the RTC Order of 13 September 2002.
- [11] Id. at 189-193.
- [12] Id. at 200-202.
- [13] 12 August 2003 in the CA Decision.
- [14] Rollo, pp. 194-198.
- [15] CA rollo, p. 36.
- [16] Rollo, pp. 82-83. Emphasis in the original.
- [17] Id. at 28.
- [18] 227 Phil. 213 (1986).
- [19] G.R. No. 34285, 8 March 1989, 171 SCRA 39.
- [20] Id. at 42-43. Emphasis in the original.
- [21] G.R. No. 88919, 25 July 1990, 187 SCRA 788.
- [22] Id. at 792-794. See also AAA v. Carbonell, G.R. No. 171465, 8 June 2007.
- [23] See Redulla v. Sandiganbayan, G.R. No. 167973, 28 February 2007, 517 SCRA 110.

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