

NIEVA M. MANEBO, PETITIONER, VS. SPO1 ROEL D. ACOSTA AND NUMERIANO SAPIANDANTE, RESPONDENTS.

G.R. No. 169554. October 28, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in this petition for review on certiorari under Rule 45 of the Rules of Court is the Decision[1] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 83300.

The antecedents of this case are as follows:

On May 4, 2000, at 6:30 p.m. at Barangay San Mariano, Sta. Rosa, Nueva Ecija, Bernadette M. Dimatulac, the victim, and Flordeliza V. Bagasan (Bagasan)[2] were seated beside each other on a papag watching television inside the church of the Kaibigan Foundation, Inc. Suddenly, a man later identified as SPO1 Roel Acosta (respondent Acosta), with an unidentified male companion, both with short firearms, entered the church premises. Respondent Acosta approached the victim and Bagasan and, at an arm's length distance, respondent Acosta shot the victim several times on the head and body causing her instantaneous death.

Severino Sardia (Sardia), who was standing in front of his house at Barangay San Mariano, Sta. Rosa, Nueva Ecija, heard several gunshots and saw two men with short firearms run out of the Kaibigan Foundation, Inc. Chapel. The two men immediately boarded an owner-type jeep without a plate number parked along Maharlika Highway and proceeded to the direction going to San Leonardo town. While the driver of the jeep was in the process of backing up his vehicle, Sardia recognized the driver as Numeriano Sapiandante (respondent Sapiandante), the Barangay Captain of Barangay Tagumpay, San Leonardo, Nueva Ecija.

A complaint for murder was filed by Nieva Manebo (Manebo), sister of the victim, against respondents Acosta and Sapiandante before the Special Action Unit (SAU) of the National Bureau of Investigation (NBI).

The findings of the SAU recommending the filing of a murder case against respondents and a certain John Doe was referred to the Office of the Chief State Prosecutor (OCSP), Department of Justice (DOJ), for preliminary investigation.[3] Respondents, in turn, filed directly with the DOJ a counter-charge of perjury, offering false witness and violation of Presidential Decree (PD) No. 1829 against Manebo, Bagasan, and Sardia.[4]

Respondents denied the accusations against them. Respondent Acosta claimed that on May 4, 2000, he was on a special assignment in San Leonardo, Nueva Ecija, pursuant to a directive issued by Police Chief Inspector Fernando Galang; that there was no reason for him to kill the victim, as he had no grudge against her; that Bagasan's description of him did not fit his physical attributes; that there was a substitution of witness, considering that the person beside the victim when she was shot was identified in the police report as Liza Gragasan and not Flordeliza Bagasan. Respondent Acosta also presented the affidavits of his witnesses corroborating his claim that he was in San Leonardo, Nueva Ecija at the time of the shooting incident.

Respondent Sapiandante denied that he was the driver of the get-away vehicle, as he did not know how to drive

nor was he a holder of a driver's license; that Sardia had a grudge against him because of the dismissal of the case filed by the former against him; and that respondent Acosta never testified for him in a case, contrary to Sardia's claim.

On January 22, 2001, State Prosecutor Melvin J. Abad issued a Joint Resolution,[5] approved by the Chief State Prosecutor, the dispositive portion of which reads:

WHEREFORE, it is respectfully recommended that the foregoing Joint Resolution be approved and the attached information for murder against respondents SPO1 Roel D. Acosta, Bgy. Captain Numeriano R. Sapiandante, and a certain John Doe be filed before the proper court and that the counter-charge for perjury, offering false witness, and violation for P.D. 1829 against Severino S. Sardia, Flordeliza Bagasan and Nieva M. Manebo be dismissed for lack of merit.[6]

On the same day, an Information[7] for murder was filed with the Regional Trial Court (RTC), Branch 27, Cabanatuan City against respondents and a certain John Doe, committed as follows:

That on or about May 4, 2000, at around 6:30 p.m. in the Municipality of Sta. Rosa, Nueva Ecija, and within the jurisdiction of this Honorable Court, the said three (3) accused, two (2) being armed, conspiring, confederating and acting together, and mutually helping each other, did then and there willfully, unlawfully and feloniously, with malice, intent to kill and treachery, attack, assault and use personal violence upon one BERNADETTE M. DIMATULAC, with accused SPO1 Roel D. Acosta suddenly and unexpectedly firing several shots at her with the use of his firearm and accused John Doe and Numeriano Sapiandante, acting as back-up and driver, respectively, thereby inflicting upon the said BERNADETTE M. DIMATULAC mortal wounds which were the direct and immediate cause of her death.

CONTRARY TO LAW.

Respondents filed their motion for reconsideration, which was denied in a Resolution[8] dated March 2, 2001.

On March 23, 2001, respondents filed their appeal with the DOJ Secretary.

In the meantime, the herein murder case filed in the RTC of Cabanatuan City, Branch 27, was transferred to the RTC of Manila, Branch 18, and docketed as Criminal Case No. 01-196354. Alias warrants of arrest[9] for respondents were issued on February 28, 2003.

On June 27, 2003, the DOJ Secretary issued his Resolution[10] reversing the appealed resolution, the dispositive portion of which reads:

WHEREFORE, the appealed resolution is hereby REVERSED. The Chief State Prosecutor is directed to move for the withdrawal of the information filed against respondents and to report the action taken hereon within ten (10) days from receipt hereof.[11]

In so ruling, the DOJ said:

Undoubtedly, denial and alibi are inherently weak for they can easily be fabricated and is invariably received with caution. Truly, alibi cannot prevail over the positive identification of an accused. Nevertheless, this judicial dictum presupposes the absence of any doubt as to the positive identification of the accused. In other words, the prosecution is not relieved of the required quantum of proof simply because the defense invoked is alibi. Where questionable, alibi assumes strength and significance which is the situation in the present case.

Immediately after receiving a call from a certain Marlon de Guzman regarding the incident, Police Chief Inspector (PCI) Peter Guibong led the investigation of the case and prepared a report. In the course thereof, it was gathered that the victim was shot while watching television in the company of one Liza Gragasan. Still in a state of shock, Gragasan was then not available to provide any information as regards the incident.

Nonetheless, PCI Guibong sent a formal letter to Gragasan to provide information on the shooting incident. Gragasan never responded to the invitation.

Comes now, instead, a certain Flordeliza Bagasan who executed an affidavit after more than four (4) months alleging that she was seated beside the victim and witnessed the actual shooting. In turn, Bagasan gave a description of the assailant which, admittedly, does not fit the physical attributes of respondent Acosta. Complainant Manebo could only ascribe the variance to the insinuation that respondent Acosta, short of undergoing plastic surgery, altered his image to avoid being recognized. This is rather too strenuous to be believed.

Under the circumstances, Bagasan's presence at the crime scene when the crime was being committed is highly suspect. Bagasan's delayed testimony coupled with an erroneous description, casts a thick cloud of doubt on her credibility. Such testimony deserves no consideration at all.

The same is true with the testimony of witness Sardia as regards the alleged participation of respondent Sapiandante. Sardia was not among those mentioned in the police report. Surprisingly, his testimony was likewise belatedly executed. Granting that he was already a resident of the barangay where the incident occurred, no reason was given as to why it took him a long period of time to give a statement about the killing. Fear could not have been the reason because as early as June 1998, he filed a complaint for attempted murder against Sapiandante which was later dismissed. As it were, the victim, involved in several criminal incidents, likewise filed a number of cases rooted from the complaint of one Alicia Yambot against Sardia as reported by PCI Guibong. Sardia's testimony may also not be given credence with respect to respondent Acosta since he did not witness the actual shooting of the victim.

All told, the evidence against respondents Acosta and Sapiandante lack the required quantum of proof sufficient to indict them for the offense charged.[12]

Pursuant to the resolution of the DOJ Secretary, the prosecutor filed a Motion to Withdraw the Information.

Petitioner filed an appeal[13] with the Office of the President (OP) which, on January 27, 2004 rendered its Decision[14] dismissing the appeal and affirming in toto the resolution of the DOJ Secretary. The OP found the findings of fact and conclusions of law of the DOJ Secretary to be amply supported by substantial evidence.

Petitioner's motion for reconsideration was denied by the OP in an Order[15] dated March 5, 2004.

Aggrieved, petitioner filed a petition for certiorari under Rule 43 with the CA.

Meanwhile, the RTC of Manila, Branch 18, issued an Order[16] dated June 22, 2004, which resolved to suspend the resolution on the motion to withdraw information filed by the prosecutor, considering that respondents were still at-large and had not been prejudiced by the petition for review filed with the CA and also in deference to the appellate court. The RTC likewise ruled for the suspension of the implementation of the warrants of arrest for respondents as moved by the respondents' counsel until after the resolution of the petition filed before the CA.

On August 31, 2005, the CA rendered the assailed Decision dismissing the petition for lack of merit.

The CA said that the OP committed no error in affirming the resolution of the DOJ Secretary; that courts will not interfere in the conduct of preliminary investigations and leave to the investigating prosecutor a sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the offender. The CA found that all was not lost for petitioner, since the denial of her petition did not mean an automatic dismissal of the information following the resolution of the DOJ Secretary, as the RTC was mandated to independently evaluate the merits of the case; and it may agree or disagree with the recommendation of the DOJ Secretary, since reliance on the latter alone would be an abdication of the RTC's duty and jurisdiction to determine a *prima facie* case.

Hence, this petition, which raises the following issues:

Whether or not the Honorable Court of Appeals, the Office of the President and the Secretary of Justice committed grave errors in the appreciation of facts and of laws in recommending the dismissal of the complaint based solely on the matters, which are best, determined during a full-blown trial.

Whether or not the Secretary of Justice may disregard the provisions of Department Circular No. 70 dated July 3, 2000, which became effective on September 1, 2000, particularly Sections 5 and 6.

Whether or not there is probable cause to charge the respondents for the crime of murder.[17]

We shall first resolve the second issue, where petitioner claims that the appeal filed by respondents with the Secretary of Justice should have been denied for their failure to comply with Sections 5 and 6 of Department Circular No. 70[18] issued by the Department of Justice on September 1, 2000.

Section 5. Contents of the Petition.

x x x x

If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition.

x x x x

Section 6. Effect of failure to comply with requirements. - The failure of the petitioner to comply with any of the foregoing requirements shall constitute sufficient ground for the dismissal of the petition.

Respondents filed their petition for review with the DOJ Secretary on March 23, 2001. On August 20, 2001, they filed with the RTC of Cabanatuan City, Branch 27, a Motion to Suspend Proceedings[19] pending a final determination of the merits of their petition by the DOJ Secretary. On August 27, 2001, respondents filed with the DOJ a document captioned as Compliance[20] where they submitted the motion to suspend proceedings filed in the RTC. Notably, the motion to suspend proceedings was only filed with the RTC after respondents had already filed their petition for review with the DOJ which explains why the petition was not accompanied by a motion to suspend proceedings. Notably, immediately after the motion to suspend proceeding was filed with the RTC, respondents submitted a copy of such motion with the DOJ. Under the circumstances, we hold that there was substantial compliance with the requirements under Section 5 of Department Circular No.70.

The first and third issues refer to the question of whether the CA erred in affirming the ruling of the Office of the President, which adopted the finding of the DOJ Secretary that there was no probable cause to indict respondents for murder.

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 abuse of discretion amounting to want of jurisdiction.[21] However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[22] We find that the present case warrants the application of the exception.

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation.[23] Being based merely on opinion and reasonable belief, it does not import absolute certainty.[24] Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more

than bare suspicion but less than evidence to justify a conviction.[25]

To determine the existence of probable cause, there is a need to conduct a preliminary investigation.[26] A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.[27] Its purpose is to

determine whether (a) a crime has been committed; and (b) there is probable cause to believe that the accused is guilty thereof.[28] It is a means of discovering which person or persons may be reasonably charged with a crime.

The conduct of a preliminary investigation is executive in nature.[29] As we have said, the Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function, unless there is a showing of grave abuse of discretion or manifest error in his findings.[30] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction. The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility.[31] It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder.

In reversing the findings of the prosecutor, the DOJ Secretary found that the police report prepared after the killing incident stated that the person seated beside the victim, who was watching television when shot, was Liza Gragasan. However, the DOJ Secretary continued that more than four months after the incident, a witness appeared in the person of Flordeliza Bagasan who claimed to be seated beside, and witnessed the actual shooting of, the victim. The DOJ Secretary found Flordeliza's description of respondent Acosta different from the latter's physical attributes. He then ruled that Flordeliza's delayed testimony, coupled with her erroneous description of respondent Acosta, cast a cloud of doubt on her credibility.

The DOJ Secretary also did not give credence to witness Sardia's testimony on respondent Sapiandante's participation in the incident. He found that Sardia was not among those mentioned in the police report, and that his testimony was likewise belatedly executed without any reason given for such delay; that fear could not have been Sardia's reason, since in June 1998, he had already filed a complaint for attempted murder against respondent Sapiandante, which was later dismissed; and that Sardia did not witness the actual shooting of the victim.

We are not persuaded.

While the initial police report stated that the name of the person who was seated beside the victim when the latter was shot was Liza Gragasan, such report would not conclusively establish that Liza Gragasan could not have been Flordeliza Bagasan, the witness who executed an affidavit four months after the incident. Notably, Flordeliza's nickname is Liza, and her surname Bagasan sounds similar to Gragasan. Under the rule of *idem sonans*, two names are said to be "*idem sonantes*" if the attentive ear finds difficulty in distinguishing them when pronounced.[32] The question whether a name sounds the same as another is not one of spelling but of pronunciation.[33] While the surname Bagasan was incorrectly written as Gragasan, when read, it has a sound similar to the surname Bagasan. Thus, the presence of Bagasan at the crime scene was established, contrary to the conclusion arrived at by the DOJ Secretary.

The execution of Bagasan's affidavit four months after the incident should not be taken against her, as such reaction is within the bounds of expected human behavior. Notably, the police report stated that during the conduct of the investigation, Bagasan was shocked after the incident and could not possibly be interviewed. Initial reluctance to volunteer information regarding a crime due to fear of reprisal is common enough that it has been

judicially declared as not affecting a witness' credibility.[34] Bagasan's action revealed a spontaneous and natural reaction of a person who had yet to fully comprehend a shocking and traumatic event.[35] Besides, the workings of the human mind are unpredictable. People react differently to emotional stress. There is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling or frightful occurrence.[36]

Moreover, a witness' delay in reporting what she knows about a crime does not render her testimony false or incredible, for the delay may be explained by the natural reticence of most people to get involved in a criminal case.[37]

The DOJ Secretary's finding that the description given by Bagasan did not fit the physical attributes of respondent Acosta is not persuasive, since Bagasan was able to positively identify respondent Acosta. She did so when a cartographic sketch of respondent Acosta was shown to her and later when she was asked to identify him from among the three pictures of men shown to her during the investigation at the NBI. Notably, there was nothing in the records that showed that Bagasan was impelled by any improper motive in pointing to respondent Acosta.

The identification made by Bagasan, with respect to respondent Acosta was corroborated by another witness, Sardia, who saw Acosta with another unidentified male companion rushing out of the chapel where the killing incident took place. Sardia was familiar with the face of respondent Acosta, since the latter was a witness in a case of frustrated murder against Sapiandante. Although Sapiandante denied in his counter-affidavit that respondent Acosta ever became such witness, this allegation should be proven during the trial of the case. Sardia was also able to positively identify Sapiandante as the driver of the get-away vehicle.

The DOJ Secretary did not also find the statements given by Sardia as credible, as the latter was not among those mentioned as a witness in the police report.

We do not agree.

The failure of the police report to mention Sardia's name as a witness would not detract from the fact that he saw respondent Acosta with an unidentified man running away from the chapel and riding the waiting get-away vehicle driven by Sapiandante. Entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries and should not be given undue significance or probative value for they are usually incomplete and inaccurate.[38]

The matter of assigning value to the declaration of a witness is best done by the trial court, which can assess such testimony in the light of the demeanor, conduct and attitude of the witness at the trial stage.[39]

Finally, we also do not agree with the DOJ Secretary's finding that since Sardia's affidavit was also belatedly executed, the same is not credible. As we have said, witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons.[40] Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting a crime to authorities.[41] The DOJ ruling -- that fear could not have been the reason, because as early as 1998 Sardia had already filed a complaint for attempted murder against Sapiandante, which was already dismissed -- is merely speculative.

We need not over-emphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial.[42] Considering the foregoing, we find that the CA erred in affirming the DOJ's finding of the absence of probable cause to indict respondents for murder.

WHEREFORE, premises considered, the instant Petition is GRANTED. The Decision dated August 31, 2005 of the Court of Appeals in CA-G.R. SP No. 83300 is REVERSED and SET ASIDE. The Secretary of Justice is hereby ORDERED to direct the Office of the City Prosecutor of Manila to withdraw the Motion to Withdraw the Information for Murder already filed in the trial court.

SO ORDERED.

Quisumbing,[*]Carpio, (Chairperson), Chico-Nazario, and Abad,**] JJ., concur.

[*] Designated to sit as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 755 dated October 12, 2009.

[**] Designated to sit as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 753 dated October 12, 2009.

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Elvi John S. Asuncion and Estela M Perlas-Bernabe, concurring; rollo, pp. 163-169.

[2] "Liza Gragasan" was the name stated in the police report.

[3] Docketed as I.S. No. 2000-1709, rollo, pp. 39-40.

[4] Docketed as I.S. No. 2000-1930 per Joint Resolution dated January 22, 2001.

[5] Rollo, pp. 92-100.

[6] Id. at 99.

[7] Id. at 103-104.

[8] Id. at 112-113.

[9] Id. at 116. Per Judge Edelwina Catubig Pastoral.

[10] Id. at 35-37.

[11] Id. at 37.

[12] Id. at 36-37.

[13] OP Case No. 03-G-460. Pursuant to Memorandum Circular No. 58, which provides that the DOJ Secretary's resolution is appealable administratively to the Office of the President (OP) for offenses punishable by reclusion perpetua.

[14] Rollo, pp. 134-135.

[15] Id. at 138-139.

[16] Id. at 250.

[17] Id. at 21-22.

[18] 2000 NPS Rule on Appeal.

[19] Rollo, pp. 122-124.

[20] *Id.* at 125.

[21] See *Maca-angcos Alawiya v. Court of Appeals*, G.R. No. 164170, April 6, 2009.

[22] *Id.*

[23] *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 352.

[24] *Id.*, citing *Ilusorio v. Ilusorio*, 540 SCRA 182 (2007).

[25] *Id.*, citing *Ching v. The Secretary of Justice*, 481 SCRA 609, 629 (2006).

[26] *Metropolitan Bank and Trust Company v. Hon. Secretary of Justice Raul M. Gonzales, Oliver T. Yao and Diana T. Yao*, G.R. No. 180165, April 7, 2009.

[27] *Id.*, citing *Villanueva v. Ople*, 475 SCRA 539, 553 (2005).

[28] *Id.*, citing *Gonzalez v. Hongkong & Shanghai Banking Corporation*, 537 SCRA 255, 269 (2007).

[29] *Id.*

[30] *Id.*, citing *Ang v. Lucero*, 449 SCRA 157, 168 (2005).

[31] *Id.*, citing *Soria v. Desierto*, 450 SCRA 339, 345 (2005).

[32] *People v. Salas*, G.R. No. 115192, March 7, 2000, 327 SCRA 319, 333, citing *Martin v. State*, 541 S.W. 2d 605, 606.

[33] See *Dojillo v. Commission on Elections*, G.R. No. 166542, July 25, 2006, 496 SCRA 484, 499, citing *Cecilio v. Tomacruz*, 62 Phil. 689 (1935).

[34] *Ingal v. People*, G.R. No. 173282, March 4, 2008, 547 SCRA 632, 650, citing *People v. Roma*, 471 SCRA 413, 429 (2005).

[35] *Id.*

[36] *Id.*, citing *People v. Dulanas*, 489 SCRA 58, 74 (2006).

[37] *People v. Ubaldo*, 419 Phil. 718, 729 (2001).

[38] *People v. Paragua*, 326 Phil. 923, 929 (1996).

[39] See *People v. Mangahas*, 370 Phil. 411, 425 (1999).

[40] *People v. Aguila*, G.R. No. 171017, December 6, 2006, 510 SCRA 642, 657.

[41] *Id.*

[42] *Metropolitan Bank and Trust Company v. Hon. Secretary of Justice Raul M. Gonzales, Oliver T. Yao and Diana T. Yao*, *supra* note 26.

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