

GLORIA PILAR S. AGUIRRE, Petitioner, vs. SECRETARY OF THE DEPARTMENT OF JUSTICE, MICHELINA S. AGUIRRE-OLONDRIZ, PEDRO B. AGUIRRE, DR. JUVIDO AGATEP and DR. MARISSA B. PASCUAL, R...

G.R. No. 170723. March 03, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this petition for review on certiorari[1] under Rule 45 of the Rules of Court, as amended, petitioner Gloria Pilar S. Aguirre (Gloria Aguirre) seeks the reversal of the 21 July 2005 Decision[2] and 5 December 2005 Resolution,[3] both of the Court of Appeals in CA-G.R. SP No. 88370, entitled “Gloria Pilar S. Aguirre v. Secretary of the Department of Justice, Michelina S. Aguirre-Olondriz, Dr. Juvido Agatep, Dra. Marissa B. Pascual, Pedro B. Aguirre and John and Jane Does.”

The Court of Appeals found no grave abuse of discretion on the part of the Secretary of the Department of Justice (DOJ) when the latter issued the twin resolutions dated 11 February 2004[4] and 12 November 2004,[5] respectively, which in turn affirmed the 8 January 2003 Resolution[6] of the Office of the City Prosecutor (OCP) of Quezon City.

The Assistant City Prosecutor for the OCP of Quezon City recommended the dismissal of the criminal complaint, docketed as I.S. No. 02-12466, for violation of Articles 172 (Falsification by Private Individuals and Use of Falsified Documents) and 262 (Mutilation), both of the Revised Penal Code, in relation to Republic Act No. 7610, otherwise known as “Child Abuse, Exploitation and Discrimination Act,” for insufficiency of evidence.

The case stemmed from a complaint filed by petitioner Gloria Aguirre against respondents Pedro B. Aguirre (Pedro Aguirre), Michelina S. Aguirre-Olondriz (Olondriz), Dr. Juvido Agatep (Dr. Agatep), Dr. Marissa B. Pascual (Dr. Pascual) and several John/Jane Does for falsification, mutilation and child abuse.

The antecedents of the present petition are:

Laureano “Larry” Aguirre[7] used to be a charge of the Heart of Mary Villa, a child caring agency run by the Good Shepherd Sisters and licensed by the Department of Social Work and Development (DSWD). Sometime in 1978, respondent Pedro Aguirre; the latter’s spouse, Lourdes S. Aguirre (Lourdes Aguirre); and their four daughters, who included petitioner Gloria Aguirre and respondent Olondriz, came to know Larry, who was then just over a year old. The Aguirres would have Larry spend a few days at their home and then return him to the orphanage thereafter. In June 1980, Larry, then two years and nine months of age, formally became the ward of respondent Pedro Aguirre and his spouse Lourdes Aguirre by virtue of an Affidavit of Consent to Legal Guardianship executed in their favor by Sister Mary Concepta Bellosillo, Superior of the Heart of Mary Villa. On 19 June 1986, the Aguirre spouses’ guardianship of Larry was legalized when the Regional Trial Court (RTC), Branch 3 of Balanga, Bataan, duly appointed them as joint co-guardians over the person and property of Larry.

As Larry was growing up, the Aguirre spouses and their children noticed that his developmental milestones were remarkably delayed. His cognitive and physical growth did not appear normal in that “at age 3 to 4 years, Larry could only crawl on his tummy like a frog x x x;”[8] he did not utter his first word until he was three years of age; did not speak in sentences until his sixth year; and only learned to stand up and walk after he turned five years old. At age six, the Aguirre spouses first enrolled Larry at the Colegio de San Agustin, Dasmariñas Village, but the child experienced significant learning difficulties there. In 1989, at age eleven, Larry was taken to specialists for neurological and psychological evaluations. The psychological evaluation[9] done on Larry revealed the latter to be suffering from a mild mental deficiency.[10] Consequent thereto, the Aguirre spouses transferred Larry to St. John Ma. Vianney, an educational institution for special children.

In November of 2001, respondent Dr. Agatep, a urologist/surgeon, was approached concerning the intention to have Larry, then 24 years of age, vasectomized. Prior to performing the procedure on the intended patient, respondent Dr. Agatep required that Larry be evaluated by a psychiatrist in order to confirm and validate whether or not the former could validly give his consent to the medical procedure on account of his mental deficiency.

In view of the required psychiatric clearance, Larry was brought to respondent Dr. Pascual, a psychiatrist, for evaluation. In a psychiatric report dated 21 January 2002, respondent Dr. Pascual made the following recommendation:

[T]he responsibility of decision making may be given to his parent or guardian.[11]

the full text of which reads –

PSYCHIATRY REPORT

21 January 2002

GENERAL DATA

LAUREANO AGUIRRE, 24 years old, male, high school graduate of St. John [Marie Vianney], was referred for psychiatric evaluation to determine competency to give consent for vasectomy.

CLINICAL SUMMARY

Larry was adopted at age 3 from an orphanage and prenatal history is not known to the adoptive family except that abortion was attempted. Developmental milestones were noted to be delayed. He started to walk and speak in single word at around age 5. He was enrolled in Colegio de San Agustin at age 6 where he showed significant learning difficulties that he had to repeat 1st and 4th grades. A consult was done in 1989 when he was 11 years old. Neurological findings and EEG results were not normal and he was given Tecretol and Encephabol by his neurologist. Psychological evaluation revealed mild to moderate mental retardation, special education training was advised and thus, he was transferred to St. John Marie Vianney. He finished his elementary and secondary education in the said school. He was later enrolled in a vocational course at Don Bosco which he was unable to continue. There has been no reported behavioral problems in school and he gets along relatively well with his teachers and some of his classmates.

Larry grew up with a very supportive adoptive family. He is the youngest in the family of four sisters. Currently, his adoptive parents are already old and have medical problem and thus, they could no longer monitor and take care of him like before. His adoptive mother has Bipolar Mood Disorder and used to physically maltreat him. A year ago, he had an episode of dizziness, vomiting and headaches after he was hit by his adoptive mother. Consult was done in Makati Medical Center and several tests were done, results of which were consistent with his developmental problem. There was no evidence of acute insults. The family subsequently decided that he should stay with one of his sisters to avoid similar incident and the possibility that he would retaliate although he has never hurt anybody. There has been no episode of violent outburst or aggressive behavior. He would often keep to himself when sad, angry or frustrated.

He is currently employed in the company of his sister and given assignment to do some photocopying, usually in the mornings. He enjoys playing billiards and basketball with his nephews and, he spends most of his leisure time watching TV and listening to music. He could perform activities of daily living without assistance except that he still needs supervision in taking a bath. He cannot prepare his own meal and never allowed to go out and run errands alone. He does not have friends and it is only his adoptive family whom he has significant relationships. He claims that he once had a girlfriend when he was in high school who was more like a best friend to him. He never had sexual relations. He has learned to smoke and drink alcohol few years ago through his cousins and the drivers. There is no history of abuse of alcohol or any prohibited substances.

MEDICAL STATUS EXAMINATION

The applicant was appropriately dressed. He was cooperative and he had intermittent eye contact. Speech was spontaneous, soft, and relevant. He responded to questions in single words or simple sentences. He was anxious specially at the start of the interview, with full affect appropriate to mood and thought content. There was no apparent thought or perceptual disturbance. No suicidal/homicidal thoughts elicited. He was oriented to time, place and person. He has intact remote and recent memory. He could do simple calculation. He could write his name and read simple words. His human figure was comparable to a 7-8 year old. He demonstrated fair judgment and poor insight. He had fair impulse control.

PSYCHOLOGICAL TESTS

Psychological tests done on March 6, 1990 (Dr. Lourdes Ledesma) and on August 4, 2000 (Dr. Ma. Teresa Gustilo- Villaosor) consistently revealed mild to moderate mental deficiency.

SIGNIFICANT LABORATORY EXAMS RESULTS

CT scan done 09 January 2001 showed nonspecific right deep parietal subcortical malacia. No localized mass lesion in the brain.

MRI done on 10 January 2001 showed bilateral parietal x x x volume loss, encephalomalacia, gliosis and ulegyria consistent with sequela of postnatal or neonatal infarcts. Ex-vacuo dilatation of the atria of lateral ventricles associated thinned posterior half of the corpus callosum.

ASSESSMENT AND RECOMMENDATION

Axis I None

Axis II Mental Retardation, mild to moderate type

Axis III None

Axis IV None at present

Axis V Current GAF = 50-60

Larry's mental deficiency could be associated with possible perinatal insults, which is consistent with the neuroimaging findings. Mental retardation associated with neurological problems usually has poorer prognosis. Larry is very much dependent on his family for his needs, adaptive functioning, direction and in making major life decisions. At his capacity, he may never understand the nature, the foreseeable risks and benefits, and consequences of the procedure (vasectomy) that his family wants for his protection. Thus, the responsibility of decision making may be given to his parent or guardian.

Marissa B. Pascual, M.D.

Psychiatrist[12]

Considering the above recommendation, respondent Pedro Aguirre's written consent was deemed sufficient in order to proceed with the conduct of the vasectomy. Hence, on 31 January 2002, respondent Dr. Agatep performed a bilateral vasectomy on Larry.

On 11 June 2002, petitioner Gloria Aguirre, respondent Pedro Aguirre's eldest child, instituted a criminal complaint for the violation of the Revised Penal Code, particularly Articles 172 and 262, both in relation to Republic Act No. 7610 against respondents Pedro Aguirre, Olondriz, Dr. Agatep, Dr. Pascual and several John/Jane Does before the Office of the City Prosecutor of Quezon City.

The Complaint Affidavit,[13] docketed as I.S. No. 02-12466, contained the following allegations:

- x x x Dr. Agatep and Dra. Pascual were (sic) medical practitioners specializing in urology and psychiatry respectively; while respondent Pedro B. Aguirre is my father; Michelina S. Aguirre-Olondriz is my sister, and the victim Laureano "Larry" Aguirre xxx is my common law brother. JOHN and JANE DOES were the persons who, acting upon the apparent instructions of respondents Michelina Aguirre-Olondriz and/or Pedro B. Aguirre, actually scouted, prospected, facilitated, solicited and/or procured the medical services of respondents Dra. Pascual and Dr. Agatep vis-à-vis the intended mutilation via bilateral vasectomy of my common law brother Larry Aguirre subject hereof.

x x x x

- Sometime in March 2002, however, the Heart of Mary Villa of the Good Shepherd Sisters was furnished a copy of respondent Dra. Pascual's Psychiatry Report dated 21 January 2004 by the "DSWD," in which my common law brother "Larry" was falsely and maliciously declared incompetent and incapable of purportedly giving his own consent to the MUTILATION VIA BILATERAL VASECTOMY intended to be performed on him by all the respondents.

x x x x

- Based on the foregoing charade and false pretenses invariably committed by all of the respondents in conspiracy with each other, on 31 January 2002, my common law brother Larry Aguirre, although of legal age but conspiratorially caused to be declared by respondents to be "mentally deficient" and incompetent to give consent to his BILATERAL VASECTOMY, was then intentionally, unlawfully, maliciously, feloniously and/or criminally placed thereafter under surgery for MUTILATION VIA "BILATERAL VASECTOMY" x x x, EVEN WITHOUT ANY AUTHORIZATION ORDER from the GUARDIANSHIP COURT, nor personal consent of Larry Aguirre himself.

In addition to the above, the complaint included therein an allegation that –

v.

x x x without a PRIOR medical examination, professional interview of nor verification and consultation with my mother, Lourdes Sabino-Aguirre, respondent Dra. Pascual baselessly, fraudulently and with obvious intent to defame and malign her reputation and honor, and worse, that of our Sabido family, falsely concluded and diagnosed, via her falsified Psychiatry Report, that my mother Lourdes Sabido-Aguirre purportedly suffers from "BIPOLAR MOOD DISORDER" x x x.

To answer petitioner Gloria Aguirre's accusations against them, respondents Pedro Aguirre, Olondriz, Dr. Agatep and Dr. Pascual submitted their respective Counter-Affidavits.

In her defense,[14] respondent Olondriz denied that she "prospected, scouted, facilitated, solicited and/or procured any false statement, mutilated or abused" her common-law brother, Larry Aguirre. Further, she countered that:

- x x x While I am aware and admit that Larry went through a vasectomy procedure, there is nothing in the Complaint which explains how the vasectomy amounts to a mutilation.

x x x x

- In any case, as I did not perform the vasectomy, I can state with complete confidence that I did not participate in any way in the alleged mutilation.

- Neither did I procure or solicit the services of the physician who performed the vasectomy, Dr. Juvido Agatep x x x. It was my father, Pedro Aguirre, Larry's guardian, who obtained his services. I merely acted upon his instructions and accompanied my brother to the physician, respondents Dra. Marissa B. Pascual x x x.

x x x x

- Neither does the Complaint explain in what manner the Complainant is authorized or has any standing to declare that Larry's consent was not obtained. Complainant is not the guardian or relative of Larry. While she argues that Larry's consent should have been obtained the Complaint does not dispute the psychiatrist's findings about Larry's inability to give consent.

x x x x

- x x x the Complaint does not even state what alleged participation was falsified or the portion of the psychiatric report that allegedly states that someone participated when in fact that person did not so participate.

x x x x

- Again, I had no participation in the preparation of the report of Dr. Pascual x x x.

x x x x

- x x x the Complaint does not dispute that he (Larry) is mentally deficient or incompetent to give consent.

x x x x

- x x x I verified that the effect of a vasectomy operation was explained to him (Larry) by both respondent doctors.

- x x x I accompanied Larry and obeyed my father on the belief that my father continues to be the legal guardian of Larry. I know of no one else who asserts to be his legal guardian x x x.[15]

Alleging the same statement of facts and defenses, respondent Pedro Aguirre argues against his complicity in the crime of mutilation as charged and asserts that:

- In any case, as I did not perform the vasectomy, I can state with complete confidence that I did not participate in any way in the alleged mutilation.[16]

Nevertheless, he maintains that the vasectomy performed on Larry does not in any way amount to mutilation, as the latter's reproductive organ is still completely intact.[17] In any case, respondent Pedro Aguirre explains that the procedure performed is reversible through another procedure called Vasovasostomy, to wit:

- I understand that vasectomy is reversible through a procedure called Vasovasostomy. I can also state with confidence that the procedure enables men who have undergone a vasectomy to sire a child. Hence, no permanent damage was caused by the procedure.

Respondent Pedro Aguirre challenges the charge of falsification in the complaint, to wit:

- x x x I did not make it appear that any person participated in any act or proceeding when that person did not in fact participate x x x.

x x x x

- x x x I had no participation in the preparation of the report of Dra. Pascual. She arrived at her report

independently, using her own professional judgment x x x.

x x x x

- What I cannot understand about Petita's Complaint is how Larry is argued to be legally a child under the definition of one law but nonetheless and simultaneously argued to be capacitated to give his consent as fully as an adult.[18]

Respondent Pedro Aguirre further clarifies that co-guardianship over Larry had been granted to himself and his wife, Lourdes Aguirre, way back on 19 June 1986 by the Regional Trial Court, Branch 3 of Balanga, Bataan. Respondent Pedro Aguirre contends that being one of the legal guardians, consequently, parental authority over Larry is vested in him. But assuming for the sake of argument that Larry does have the capacity to make the decision concerning his vasectomy, respondent Pedro Aguirre argues that petitioner Gloria Aguirre has no legal personality to institute the subject criminal complaint, for only Larry would have the right to do so.

Just as the two preceding respondents did, respondent Dr. Agatep also disputed the allegations of facts stated in the Complaint. Adopting the allegations of his co-respondents insofar as they were material to the charges against him, he vehemently denied failing to inform Larry of the intended procedure. In his counter-statement of facts he averred that:

(b) x x x I scheduled Larry for consultative interview x x x wherein I painstakingly explained what vasectomy is and the consequences thereof; but finding signs of mental deficiency, x x x I advised his relatives and his nurse who accompanied him to have Larry examined by a psychiatrist who could properly determine whether or not Larry x x x can really give his consent, thus I required them to secure first a psychiatric evaluation and clearance prior to the contemplated procedure.

(c) On January 21, 2002, I was furnished a copy of a psychiatric report prepared by Dr. Marissa Pascual x x x. In her said report, Dr. Pascual found Larry to suffer from "mental retardation, mild to moderate type" and further stated that "at his capacity, he may never understand the nature, the foreseeable risks and benefits and consequences of the procedure (vasectomy) x x x, thus the responsibility of decision making may be given to his parent or guardian x x x."

(d) x x x I was likewise furnished a copy of an affidavit executed by Pedro Aguirre stating that he was the legal guardian of Larry x x x Pedro Aguirre gave his consent to vasectomize Larry x x x.

(e) Only then, specifically January 31, 2002, vasectomy was performed with utmost care and diligence.[19]

In defense against the charge of falsification and mutilation, respondent Dr. Agatep argued that subject complaint should be dismissed for the following reasons:

- The complainant has no legal personality to file this case. As mentioned above, she is only a common law sister of Larry who has a legal guardian in the person of Pedro Aguirre, one of the herein respondents x x x.

- x x x [t]he allegations in the complaint clearly centers on the condition of complainant's mother, Lourdes Aguirre, her reputation, and miserably fails to implicate the degree of participation of herein respondent. x x x

x x x x

(b) Falsification. x x x I strongly aver that this felony does not apply to me since it clearly gives reference to co-respondent, Dr. Marissa Pascual's Psychiatry Report, dated January 21, 2002, in relation with her field of profession, an expert opinion. I do not have any participation in the preparation of said report, x x x neither did I utilized (sic) the same in any proceedings to the damage to another. x x x I also deny using a falsified document x x x.

(c) Mutilation. x x x Vasectomy does not in anyway equate to castration and what is touched in vasectomy is not considered an organ in the context of law and medicine, it is quite remote from the penis x x x.

(d) Child Abuse. x x x the complaint-affidavit is very vague in specifying the applicability of said law. It merely avers that Laureano “Larry” Aguirre is a child, and alleges his father, Pedro Aguirre, has parental authority over him x x x.[20]

Similarly, respondent Dr. Pascual denied the criminal charges of falsification and mutilation imputed to her. She stands by the contents of the assailed Psychiatric Report, justifying it thus:

x x x My opinion of Larry Aguirre’s mental status was based on my own personal observations, his responses during my interview of him, the results of the two (2) psychological tests conducted by clinical psychologists, the results of laboratory tests, including a CT Scan and MRI, and his personal and family history which I obtained from his sister, Michelina Aguirre-Olondriz x x x.

- x x x the reference in my report concerning Mrs. Lourdes Aguirre is not a statement of my opinion of Mrs. Aguirre’s mental status, x x x. Rather, it is part of the patient’s personal and family history as conveyed to me by Mrs. Aguirre- Olondriz.

- x x x An expression of my opinion, especially of an expert opinion, cannot give rise to a charge for falsification. A contrary opinion by another expert only means that the experts differ, and does not necessarily reflect on the truth or falsity of either opinion x x x.

- x x x I never stated that I examined Mrs. Aguirre, because I never did x x x.

- I had no participation in the surgery performed on Larry Aguirre except to render an opinion on his capacity to give informed consent to the vasectomy x x x.

- Without admitting the merits of the complaint, I submit that complainants are not the proper persons to subscribe to the same as they are not the offended party, peace officer or other public officer charged with the enforcement of the law violated x x x.[21]

The Assistant City Prosecutor held that the circumstances attendant to the case did not amount to the crime of falsification. He held that –

[T]he claim of the complainant that the Psychiatric Report was falsified, because consent was not given by Larry Aguirre to the vasectomy and/or he was not consulted on said operation does not constitute falsification. It would have been different if it was stated in the report that consent was obtained from Larry Aguirre or that it was written therein that he was consulted on the vasectomy, because that would mean that it was made to appear in the report that Larry Aguirre participated in the act or proceeding by giving his consent or was consulted on the matter when in truth and in fact, he did not participate. Or if not, the entry would have been an untruthful statement. But that is not the case. Precisely (sic) the report was made to determine whether Larry Aguirre could give his consent to his intended vasectomy. Be that as it may, the matter of Larry’s consent having obtained or not may nor be an issue after all, because complainant’s (sic) herself alleged that Larry’s mental condition is that of a child, who can not give consent. Based on the foregoing consideration, no falsification can be established under the circumstances.[22]

Even the statement in the Psychiatric Report of respondent Dr. Pascual that Lourdes Aguirre had Bipolar Mood Disorder cannot be considered falsification since –

The report did not state that Lourdes Aguirre was in fact personally interviewed by respondent Dr. Pascual and that the latter concluded that Lourdes Aguirre has Bipolar Mood Disorder. The report merely quoted other sources of information with respect to the condition of Lourdes Aguirre, in the same manner that the fact that Lourdes Aguirre was physically abusing Larry Aguirre was also not of Dra. Pascual personal knowledge. But

the fact that Dra. Pascual cited finding, which is not of her own personal knowledge in her report does not mean that she committed falsification in the process. Her sources may be wrong and may affect the veracity of her report, but for as long as she has not alleged therein that she personally diagnosed Lourdes Aguirre, which allegation would not then be true, she cannot be charged of falsification. Therefore, it goes without saying that if the author of the report is not guilty, then with more reason the other respondents are not liable.[23]

Respecting the charge of mutilation, the Assistant City Prosecutor also held that the facts alleged did not amount to the crime of mutilation as defined and penalized under Article 262 of the Revised Penal Code, i.e., “[t]he vasectomy operation did not in any way deprived (sic) Larry of his reproductive organ, which is still very much part of his physical self.” He ratiocinated that:

While the operation renders him the inability (sic) to procreate, the operation is reversible and therefore, cannot be the permanent damage contemplated under Article 262 of the Revised Penal Code.[24]

The Assistant City Prosecutor,[25] in a Resolution[26] dated 8 January 2003, found no probable cause to hold respondents Pedro Aguirre, Olondriz, Dr. Agatep and Dr. Pascual liable for the complaint of falsification and mutilation, more specifically, the violation of Articles 172 and 262 of the Revised Penal Code, in relation to Republic Act No. 7610. Accordingly, the Assistant City Prosecutor recommended the dismissal of petitioner Gloria Aguirre’s complaint for insufficiency of evidence. The dispositive portion of the resolution reads:

WHEREFORE, it is recommended that the above-entitled case be dismissed for insufficiency of evidence.[27]

On 18 February 2003, petitioner Gloria Aguirre appealed the foregoing resolution to the Secretary of the DOJ by means of a Petition for Review.[28]

In a Resolution dated 11 February 2004, Chief State Prosecutor Jovencito R. Zuño, for the Secretary of the DOJ, dismissed the petition. In resolving said appeal, the Chief State Prosecutor held that:

Under Section 12, in relation to Section 7, of Department Circular No. 70 dated July 3, 2000, the Secretary of Justice may, *motu proprio*, dismiss outright the petition if there is no showing of any reversible error in the questioned resolution or finds the same to be patently without merit.

We carefully examined the petition and its attachments and found no error that would justify a reversal of the assailed resolution which is in accord with the law and evidenced (sic) on the matter.[29]

Petitioner Gloria Aguirre’s Motion for Reconsideration was likewise denied with finality by the DOJ in another Resolution dated 12 November 2004.

Resolute in her belief, petitioner Gloria Aguirre went to the Court of Appeals by means of a Petition for Certiorari, Prohibition and Mandamus under Rule 65 of the Rules of Court, as amended.

On 21 July 2005, the Court of Appeals promulgated its Decision dismissing petitioner Gloria Aguirre’s recourse for lack of merit.

The fallo of the assailed decision reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. Consequently, the assailed Resolutions dated February 11, 2004 and November 12, 2004 of the Secretary of Justice in I.S. No. 02-12466 are hereby AFFIRMED.[30]

Petitioner Gloria Aguirre’s motion for reconsideration proved futile as it was denied by the appellate court in a Resolution dated 5 December 2005.

Hence, the present petition filed under Rule 45 of the Rules of Court, as amended, premised on the following

arguments:

I.

THE COURT OF APPEALS COMMITTED SERIOUS, GRAVE AND REVERSIBLE ERRORS OF LAW WHEN IT CONCLUDED, BASED PURPORTEDLY ON THE INTERNET WHICH RUNS AMUCK WITH OUR SYSTEM OF THE RULE OF LAW AND THE EVIDENCE ON RECORD, THAT BILATERAL VASECTOMY IS PURPORTEDLY 100% REVERSIBLE BY A FUTURE MEDICAL PROCEDURE HENCE NOT AMOUNTING TO MUTILATION, X X X; AND

X X X X

II.

WORSE, THE COURT OF APPEALS COMMITTED GRAVE, SERIOUS AND REVERSIBLE ERRORS OF LAW WHEN IT REFUSED TO DIRECT THE INDICTMENT OF THE PRIVATE RESPONDENTS FOR MUTILATION AND FALSIFICATION DESPITE THE EXISTENCE OF SUFFICIENT PROBABLE CAUSE THEREFOR X X X.[31]

The foregoing issues notwithstanding, the more proper issue for this Court's consideration is, given the facts of the case, whether or not the Court of Appeals erred in ruling that the DOJ did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when the latter affirmed the public prosecutor's finding of lack of probable cause for respondents Pedro Aguirre, Olondriz, Dr. Agatep and Dr. Pascual to stand trial for the criminal complaints of falsification and mutilation in relation to Republic Act No. 7610.

In ruling that the DOJ did not commit grave abuse of discretion amounting to lack or excess of jurisdiction, the Court of Appeals explained that:

Evidently, the controversy lies in the permanency of sterilization as a result of a vasectomy operation, and the chances of restoring fertility with a reversal surgery x x x.

We sustain the DOJ in ruling that the bilateral vasectomy performed on Larry does not constitute mutilation even if intentionally and purposely done to prevent him from siring a child.

X X X X

Sterilization is to be distinguished from castration: in the latter act the reproductive capacity is permanently removed or damaged.[32]

It then concluded that:

The matter of legal liability, other than criminal, which private respondents may have incurred for the alleged absence of a valid consent to the vasectomy performed on Larry, is certainly beyond the province of this certiorari petition. Our task is confined to the issue of whether or not the Secretary of Justice and the Office of the City Prosecutor of Quezon City committed grave abuse of discretion in their determining the existence or absence of probable cause for filing criminal cases for falsification and mutilation under Articles 172 (2) and 262 of the Revised Penal Code.[33]

Petitioner Gloria Aguirre, however, contends that the Court of Appeals and the DOJ failed to appreciate several important facts: 1) that bilateral vasectomy conducted on petitioner's brother, Larry Aguirre, was admitted[34]; 2) that the procedure caused the perpetual destruction of Larry's reproductive organs of generation or conception;[35] 3) that the bilateral vasectomy was intentional and deliberate to deprive Larry forever of his reproductive organ and his capacity to procreate; and 4) that respondents, "in conspiracy with one another, made not only one but two (2) untruthful statements, and not mere inaccuracies when they made it appear in the psychiatry report"[36] that a) Larry's consent was obtained or at the very least that the latter was informed of the

intended vasectomy; and b) that Lourdes Aguirre was likewise interviewed and evaluated. Paradoxically, however, petitioner Gloria Aguirre does not in any way state that she, instead of respondent Pedro Aguirre, has guardianship over the person of Larry. She only insists that respondents should have obtained Larry's consent prior to the conduct of the bilateral vasectomy.

In contrast, the Office of the Solicitor General (OSG), for public respondent DOJ, argues that "the conduct of preliminary investigation to determine the existence of probable cause for the purpose of filing (an) information is the function of the public prosecutor." [37] More importantly, "the element[s] of castration or mutilation of an organ necessary for generation is completely absent as he was not deprived of any organ necessary for reproduction, much less the destruction of such organ." [38]

Likewise, in support of the decision of the Court of Appeals, respondents Pedro Aguirre and Olondriz assert that, fundamentally, petitioner Gloria Aguirre has no standing to file the complaint, as she has not shown any injury to her person or asserted any relationship with Larry other than being his "common law sister"; further, that she cannot prosecute the present case, as she has not been authorized by law to file said complaint, not being the offended party, a peace officer or a public officer charged with the enforcement of the law. Accordingly, respondents Pedro Aguirre and Olondriz posit that they, together with the other respondents Dr. Agatep and Dr. Pascual, may not be charged with, prosecuted for and ultimately convicted of: 1) "mutilation x x x since the bilateral vasectomy conducted on Larry does not involve castration or amputation of an organ necessary for reproduction as the twin elements of the crime of mutilation x x x are absent" [39]; and 2) "falsification x x x since the acts allegedly constituting falsification involve matters of medical opinion and not matters of fact," [40] and that petitioner Gloria Aguirre failed to prove damage to herself or to any other person.

Respondent Dr. Agatep, in the same vein, stresses that vasectomy is not mutilation. He elucidates that vasectomy is merely the "excision of the vas deferens, the duct in testis which transport semen" [41]; that it is the penis and the testis that make up the male reproductive organ and not the vas deferens; and additionally argues that for the crime of mutilation to be accomplished, Article 262 of the Revised Penal Code necessitates that there be intentional total or partial deprivation of some essential organ for reproduction. Tubes, seminal ducts, vas deferens or prostatic urethra not being organs, respondent Dr. Agatep concludes, therefore, that vasectomy does not correspond to mutilation.

Anent the charge of falsification of a private document, respondent Dr. Agatep asseverates that he never took part in disclosing any information, data or facts as contained in the contentious Psychiatric Report.

For her part, respondent Dr. Pascual insists that the assailed Psychiatry Report was the result of her independent exercise of professional judgment. "Rightly or wrongly, (she) diagnosed Larry Aguirre to be incapable of giving consent, based on interviews made by the psychiatrist on Larry Aguirre and persons who interacted with him." [42] And supposing that said report is flawed, it is, at most, an erroneous medical diagnosis.

The petition has no merit.

Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. [43] The term does not mean "actual and positive cause" nor does it import absolute certainty. [44] It is merely based on opinion and reasonable belief; [45] that is, the belief that the act or omission complained of constitutes the offense charged. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. [46]

The executive department of the government is accountable for the prosecution of crimes, its principal obligation

being the faithful execution of the laws of the land. A necessary component of the power to execute the laws is the right to prosecute their violators,[47] the responsibility of which is thrust upon the DOJ. Hence, the determination of whether or not probable cause exists to warrant the prosecution in court of an accused is consigned and entrusted to the DOJ. And by the nature of his office, a public prosecutor 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.

Put simply, public prosecutors under the DOJ have a wide range of discretion, the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by (public) prosecutors.[48] And this Court has consistently adhered to the policy of non-interference in the conduct of preliminary investigations, and to leave to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against the supposed offender.[49]

But this is not to discount the possibility of the commission of abuses on the part of the prosecutor. It is entirely possible that the investigating prosecutor may erroneously exercise the discretion lodged in him by law. This, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.[50]

Prescinding from the above, the court's duty in an appropriate case, therefore, is confined to a determination of whether the assailed executive determination of probable cause was done without or in excess of jurisdiction resulting from a grave abuse of discretion. For courts of law to grant the extraordinary writ of certiorari, so as to justify the reversal of the finding of whether or not there exists probable cause to file an information, the one seeking the writ must be able to establish that the investigating prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. Grave abuse of discretion is not enough.[51] Excess of jurisdiction signifies that he had jurisdiction over the case but has transcended the same or acted without authority.[52]

Applying the foregoing disquisition to the present petition, the reasons of the Assistant City Prosecutor in dismissing the criminal complaints for falsification and mutilation, as affirmed by the DOJ, is determinative of whether or not he committed grave abuse of discretion amounting to lack or excess of jurisdiction.

In ruling the way he did – that no probable cause for falsification and mutilation exists - the Assistant City Prosecutor deliberated on the factual and legal milieu of the case. He found that there was no sufficient evidence to establish a prima facie case for the crimes complained of as defined and punished under Articles 172, paragraph 2, and 262 of the Revised Penal Code in relation to Republic Act No. 7610, respectively. Concerning the crime of falsification of a private document, the Assistant City Prosecutor reasoned that the circumstances attendant to the case did not amount to the crime complained of, that is, the lack of consent by Larry Aguirre before he was vasectomized; or the fact that the latter was not consulted. The lack of the two preceding attendant facts do not in any way amount to falsification, absent the contention that it was made to appear in the assailed report that said consent was obtained. That would have been an untruthful statement. Neither does the fact that the Psychiatric Report state that Lourdes Aguirre has Bipolar Mood Disorder by the same token amount to falsification because said report does not put forward that such finding arose after an examination of the concerned patient. Apropos the charge of mutilation, he reasoned that though the vasectomy rendered Larry unable to procreate, it was not the permanent damage contemplated under the pertinent provision of the penal code.

We agree. Grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOJ and the Assistant City Prosecutor was not shown in the present case.

In the present petition, respondents Pedro Aguirre, Olondriz, Dr. Agatep and Dr. Pascual are charged with violating Articles 172 and 262 of the Revised Penal Code, in relation to Republic Act No. 7610. Article 172, paragraph 2 of the Revised Penal Code, defines the crime of falsification of a private document, viz –

Art. 172. Falsification by private individuals and use of falsified documents. – The penalty of prision correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

x x x x

- Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Petitioner Gloria Aguirre charges respondents with falsification of a private document for conspiring with one another in keeping Larry “in the dark about the foregoing (vasectomy) as the same was concealed from him by the respondents x x x,”[53] as well as for falsely concluding and diagnosing Lourdes Aguirre to be suffering from Bipolar Mood Disorder.

A scrutiny, however, of Article 171 of the Revised Penal Code which defines the acts constitutive of falsification, that is –

Art. 171. x x x shall falsify a document by committing any of the following acts:

- Counterfeiting or imitating any handwriting, signature, or rubric;
- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
- Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
- Making untruthful statements in a narration of facts;
- Altering true dates;
- Making any alteration or intercalation in a genuine document which changes its meaning;
- Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original;
or
- Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

vis-à-vis the much criticized Psychiatric Report, shows that the acts complained of do not in any manner, by whatever stretch of the imagination, fall under any of the eight (8) enumerated acts constituting the offense of falsification.

In order to properly address the issue presented by petitioner Gloria Aguirre, it is necessary that we discuss the elements of the crime of falsification of private document under the Revised Penal Code, a crime which all the respondents have been accused of perpetrating. The elements of said crime under paragraph 2 of Article 172 of our penal code are as follows: 1) that the offender committed any acts of falsification, except those in par. 7, enumerated in Article 171; 2) that the falsification was committed in any private document; and 3) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such

damage. Under Article 171, paragraph 2, a person may commit falsification of a private document by causing it to appear in a document that a person or persons participated in an act or proceeding, when such person or persons did not in fact so participate in the act or proceeding. On the other hand, falsification under par. 3 of the same article is perpetrated by a person or persons who, participating in an act or proceeding, made statements in that act or proceeding and the offender, in making a document, attributed to such person or persons statements other than those in fact made by such person or persons. And the crime defined under paragraph 4 thereof is committed when 1) the offender makes in a document statements in a narration of facts; 2) he has a legal obligation to disclose the truth of the facts narrated by him; 3) the facts narrated by the offender are absolutely false; and 4) the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person.

Applying the above-stated elements of the crime to the case at bar, in order that respondent Dr. Pascual, and the rest acting in conspiracy with her, to have committed the crime of falsification under par. 3 and 4 of Article 171 of the Revised Penal Code, it is essential that there be prima facie evidence to show that she had caused it to appear that Larry gave his consent to be vasectomized or at the very least, that the proposed medical procedure was explained to Larry. But in the assailed report, no such thing was done. Lest it be forgotten, the reason for having Larry psychiatrically evaluated was precisely to ascertain whether or not he can validly consent with impunity to the proposed vasectomy, and not to obtain his consent to it or to oblige respondent Dr. Pascual to explain to him what the import of the medical procedure was. Further, that Larry's consent to be vasectomized was not obtained by the psychiatrist was of no moment, because nowhere is it stated in said report that such assent was obtained. At any rate, petitioner Gloria Aguirre contradicts her very own allegations when she persists in the contention that Larry has the mental age of a child; hence, he was legally incapable of validly consenting to the procedure.

In the matter of the supposed incorrect diagnosis of Lourdes Aguirre, with regard to paragraph 2 of Article 171 of the Revised Penal Code, we quote with approval the succinct statements of the Assistant City Prosecutor:

[T]he fact that Dra. Pascual cited finding, which is not of her own personal knowledge in her report does not mean that she committed falsification in the process. Her sources may be wrong and may affect the veracity of her report, but for as long as she has not alleged therein that she personally diagnosed Lourdes Aguirre, which allegation would not then be true, she cannot be charged of falsification. Therefore, it goes without saying that if the author of the report is not guilty, then with more reason the other respondents are not liable.[54]

As to the charge of mutilation, Art. 262 of the Revised Penal Code defines the crime as –

Art. 262. Mutilation. – The penalty of reclusion temporal to reclusion perpetua shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

Any other intentional mutilation shall be punished by prision mayor in its medium and maximum periods.

A straightforward scrutiny of the above provision shows that the elements[55] of mutilation under the first paragraph of Art. 262 of the Revised Penal Code to be 1) that there be a castration, that is, mutilation of organs necessary for generation; and 2) that the mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction. According to the public prosecutor, the facts alleged did not amount to the crime of mutilation as defined and penalized above, i.e., “[t]he vasectomy operation did not in any way deprived (sic) Larry of his reproductive organ, which is still very much part of his physical self.” Petitioner Gloria Aguirre, however, would want this Court to make a ruling that bilateral vasectomy constitutes the crime of mutilation.

This we cannot do, for such an interpretation would be contrary to the intentions of the framers of our penal code.

A fitting riposte to the issue at hand lies in *United States v. Esparcia*,^[56] in which this Court had the occasion to shed light on the implication of the term mutilation. Therein we said that:

The sole point which it is desirable to discuss is whether or not the crime committed is that defined and penalized by article 414 of the Penal Code. The English translation of this article reads: "Any person who shall intentionally castrate another shall suffer a penalty ranging from reclusion temporal to reclusion perpetua." The Spanish text, which should govern, uses the word "castrare," inadequately translated into English as "castrate." The word "capar," which is synonymous of "castrar," is defined in the Royal Academic Dictionary as the destruction of the organs of generation or conception. Clearly it is the intention of the law to punish any person who shall intentionally deprive another of any organ necessary for reproduction. An applicable construction is that of Viada in the following language:

"At the head of these crimes, according to their order of gravity, is the mutilation known by the name of 'castration' which consists of the amputation of whatever organ is necessary for generation. The law could not fail to punish with the utmost severity such a crime, which, although not destroying life, deprives a person of the means to transmit it. But bear in mind that according to this article in order for 'castration' to exist, it is indispensable that the 'castration' be made purposely. The law does not look only to the result but also to the intention of the act. Consequently, if by reason of an injury or attack, a person is deprived of the organs of generation, the act, although voluntary, not being intentional to that end, it would not come under the provisions of this article, but under No. 2 of article 431." (Viada, *Codigo Penal*, vol. 3, p. 70. See to same effect, 4 Groizard, *Codigo Penal*, p. 525.)

Thus, the question is, does vasectomy deprive a man, totally or partially, of some essential organ of reproduction? We answer in the negative.

In the male sterilization procedure of vasectomy, the tubular passage, called the vas deferens, through which the sperm (cells) are transported from the testicle to the urethra where they combine with the seminal fluid to form the ejaculant, is divided and the cut ends merely tied.^[57] That part, which is cut, that is, the vas deferens, is merely a passageway that is part of the duct system of the male reproductive organs. The vas deferens is not an organ, i.e., a highly organized unit of structure, having a defined function in a multicellular organism and consisting of a range of tissues.^[58] Be that as it may, even assuming *arguendo* that the tubular passage can be considered an organ, the cutting of the vas deferens does not divest or deny a man of any essential organ of reproduction for the simple reason that it does not entail the taking away of a part or portion of the male reproductive system. The cut ends, after they have been tied, are then dropped back into the incision.^[59]

Though undeniably, vasectomy denies a man his power of reproduction, such procedure does not deprive him, "either totally or partially, of some essential organ for reproduction." Notably, the ordinary usage of the term "mutilation" is the deprivation of a limb or essential part (of the body),^[60] with the operative expression being "deprivation." In the same manner, the word "castration" is defined as the removal of the testies or ovaries.^[61] Such being the case in this present petition, the bilateral vasectomy done on Larry could not have amounted to the crime of mutilation as defined and punished under Article 262, paragraph 1, of the Revised Penal Code. And no criminal culpability could be foisted on to respondent Dr. Agatep, the urologist who performed the procedure, much less the other respondents. Thus, we find sufficient evidence to explain why the Assistant City Prosecutor and the DOJ ruled the way they did. Verily, We agree with the Court of Appeals that the writ of certiorari is unavailing; hence, should not be issued.

It is once more apropos to pointedly apply the Court's general policy of non-interference in the conduct of preliminary investigations. As it has been oft said, the Supreme Court cannot order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case.^[62] The courts try and absolve or convict the accused but, as a rule, have no part in the initial decision to prosecute

him.[63] The possible exception to this rule is where there is an unmistakable showing of a grave abuse of discretion amounting to lack or excess of jurisdiction that will justify judicial intrusion into the precincts of the executive. But that is not the case herein.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The assailed 21 July 2005 Decision and 5 December 2005 Resolution, both of the Court of Appeals in CA-G.R. SP No. 88370 are hereby AFFIRMED. Costs against petitioner Gloria Aguirre.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona, and Reyes, JJ., concur.

* Justice Renato C. Corona was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 10 December 2007.

[1] Rollo, pp. 39-89.

[2] Penned by Court of Appeals Associate Justice Martin S. Villarama, Jr. with Associate Justices Rosmari D. Carandang and Lucenito N. Tagle, concurring; Annex “A” of the Petition; id. at 90-108.

[3] Annex “A-1”; id. at 110.

[4] Id. at 157.

[5] Id. at 159.

[6] Annex “B” of the Petition; id. at 161-163.

[7] Originally named as Jose Miguel Garcia.

[8] Report of Neuropsychological Evaluation conducted by Lourdes K. Ledesma, Ph.D.; rollo, pp. 299-304.

[9] Conducted by Dr. Ma. Teresa Gustilo-Villasor, a clinical psychologist. Id. at 294-298.

[10] Id.

[11] Id. at 232.

[12] Id. at 230-232.

[13] Id. at 212-224.

[14] Id. at 275-278.

[15] Id.

[16] Id. at 287.

[17] Id.

[18] Id. at 288-291.

[19] Id. at 314-316.

[20] Id. at 309-312.

[21] Id. at 279-281.

- [22] Id. at 162.
- [23] Id.
- [24] Id.
- [25] Gibson T. Araula, Jr.
- [26] Rollo, pp. 161-163.
- [27] Id. at 163.
- [28] Id. at 164-206.
- [29] Id. at 157.
- [30] Id. at 107.
- [31] Id. at 51-54.
- [32] Id. at 105-106.
- [33] Id. at 107.
- [34] Id. at 53.
- [35] Id.
- [36] Id.
- [37] Id. at 659.
- [38] Id. at 660.
- [39] Id. at 764-765.
- [40] Id. at 765.
- [41] Id. at 863.
- [42] Id. at 733.
- [43] R.R. Paredes v. Calilung, G.R. No. 156055, 5 March 2007, 517 SCRA 369, 394.
- [44] Id.
- [45] Id.
- [46] Webb v. Hon. De Leon, 317 Phil. 758, 789 (1995).
- [47] R.R. Paredes v. Calilung, supra note 43 at 394.
- [48] Webb v. Hon. De Leon, supra note 46 at 800.
- [49] Andres v. Cuevas, G.R. No. 150869, 9 June 2005, 460 SCRA 38, 52.
- [50] D.M. Consuji, Inc. v. Esguerra, 328 Phil. 1168, 1185 (1996).
- [51] R.R. Paredes v. Calilung, supra note 43 at 397.
- [52] Sarigumba v. Sandiganbayan, G.R. Nos. 154239-41, 16 February 2005, 451 SCRA 533, 549.

[53] Rollo, pp. 235-243.

[54] Id. at 208.

[55] Reyes, The Revised Penal Code, Book Two (13th ed.), p. 457.

[56] 36 Phil. 840, 840-841 (1917).

[57] Solis, Legal Medicine (1987 ed.), p. 623.

[58] Clugston, Dictionary of Science (1998 ed.), p. 558.

[59] Schwartz, Shires, Spencer, Storer, Principle of Surgery, Vol. Two (4th ed.), pp. 1729-1730.

[60] Webster's Third New International Dictionary (1993 ed.), p. 1493.

[61] Id. at 349.

[62] Sanchez v. Demetriou, G.R. Nos. 111771-77, 9 November 1993, 227 SCRA 627, 643.

[63] Id.

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