

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JOSEPH
“JOJO” V. GREY, FRANCIS B. GREY, AND COURT OF
APPEALS-CEBU CITY, EIGHTEENTH DIVISION, RESPONDENTS.**

G.R. No. 180109. July 26, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court filed by the People of the Philippines, through the Office of the Solicitor General (OSG), seeking the nullification of the Court of Appeals (CA) (Cebu City-Eighteenth Division) Resolution[1] dated March 13, 2007, Decision[2] dated May 8, 2007, and Resolution[3] dated October 8, 2007, in CA-G.R. SP No. 02558, entitled "Mayor Joseph `Jojo' V. Grey and Francis B. Grey v. Hon. Roberto A. Navidad, Presiding Judge of the Regional Trial Court of Calbayog City, Branch 32, and the People of the Philippines."

On December 11, 2006, an Information for Murder was filed against respondent Joseph Grey, former Mayor of San Jorge, Samar; his son, respondent Francis Grey; and two others for the death of Rolando Diocton, an employee of the San Jorge municipal government, before the Regional Trial Court (RTC), Branch 41, Gandara, Samar. The Information was accompanied by other supporting documents and a motion for the issuance of a warrant of arrest.[4]

Respondents filed a petition for review with the Secretary of Justice. Meanwhile, RTC Branch 41 Presiding Judge Rosario Bandal denied the motion for the issuance of a warrant of arrest. Judge Bandal found the prosecution's evidence to be insufficient to link respondents to the crime charged. She directed the prosecution to present, within five days, additional evidence that would show that accused were the assailants or that they conspired, confederated, or helped in the commission of the crime charged.[5]

The prosecution then filed an Omnibus Motion for Reconsideration and a motion for the inhibition of Judge Bandal.[6] The judge inhibited herself but denied the motion for reconsideration.[7]

Thereafter, the provincial prosecutor filed a petition for change of venue before this Court, attaching thereto a letter from the victim's wife expressing fear for her life and that of the other witnesses.[8]

The Secretary of Justice, in a Resolution dated January 4, 2007, dismissed the petition for review and respondents' counter charge of perjury. He found no error to warrant the modification or reversal of the prosecutor's resolution. The Secretary of Justice ruled that the evidence adduced against respondents was sufficient to establish probable cause for the offense charged. Respondents' motion for reconsideration was denied on January 30, 2007.[9]

Subsequently, the prosecution withdrew their motion for change of venue before this Court, citing financial difficulties in bringing witnesses to Manila.[10] Respondents opposed the motion and prayed that all proceedings be suspended until after the May 14, 2007 elections.[11]

However, on February 19, 2007, respondents filed their own petition for change of venue before this Court,

alleging that the presiding judge who took over the case, Judge Roberto Navidad, was a pawn in the political persecution being staged against them.[12] In its August 22, 2007 Resolution, this Court denied the petition for lack of merit and directed Judge Navidad to hear the case with dispatch.[13]

Accordingly, Judge Navidad proceeded with the preliminary inquiry on the existence of probable cause, and, in an Order dated February 20, 2007, ruled that the finding of probable cause was supported by the evidence on record. He then issued warrants of arrest against respondents and all but one of their co-accused.[14]

Respondents filed a Petition[15] for Certiorari and Prohibition before the CA, alleging that Judge Navidad gravely abused his discretion in issuing the February 20, 2007 Order, and seeking a temporary restraining order (TRO) and/or a writ of preliminary injunction. They alleged that the filing of the murder charges against them on the basis of perjured statements coming from their political opponents' supporters "smacks of political harassment at its foulest form." [16] Respondents pointed out that the criminal complaint was filed barely two months after Joseph Grey declared his intentions to challenge incumbent Congressman Reynaldo S. Uy, a former ally, in the May 2007 congressional elections. Likewise, respondents claimed that one of the witnesses, Urien Moloboco, who executed an affidavit before the Provincial Prosecutor, was the subject of an Alias Warrant of Arrest for murder issued by the RTC of Gandara, Samar on June 26, 2006, and, hence, was a fugitive from the law at the time of the filing of the criminal complaint against respondents. Respondents maintain that the fact that Moloboco was not arrested when he executed his affidavit before the prosecutor, spoke of the power and clout of the witness' protectors.[17]

The CA Eighteenth Division issued a TRO on March 13, 2007.[18] After oral arguments, the CA issued a Decision[19] dated May 8, 2007, making the TRO permanent, ordering that warrants of arrest be set aside, and dismissing the criminal case without prejudice.

The CA held that Judge Navidad failed to abide by the constitutional mandate for him to personally determine the existence of probable cause.[20] According to the CA, nowhere in the assailed Order did Judge Navidad state his personal assessment of the evidence before him and the personal justification for his finding of probable cause. It found that the judge extensively quoted from the Joint Resolution of the Provincial Prosecutor and the Resolution of the Secretary of Justice, and then adopted these to conclude that there was sufficient evidence to support the finding of probable cause. The CA held that the Constitution commands the judge to personally determine the existence of probable cause before issuing warrants of arrest.[21]

Moreover, the CA also ruled that the Information was not supported by the allegations in the submitted affidavits.[22] It pointed out that the Information charged respondents as principals by direct participation, but the complaint-affidavit and supporting affidavits uniformly alleged that respondents were not at the scene of the shooting.[23] The CA further found that the allegations in the complaint-affidavit and supporting affidavits were insufficient to establish probable cause. It said that there was nothing in the affidavits to show acts that would support the prosecution's theory that respondents were also charged as principals by conspiracy.[24]

Petitioner's motion for reconsideration of the CA's May 8, 2007 Decision was denied in a Resolution dated October 8, 2007.[25] Hence, this petition for review.

Petitioner argues that respondents committed forum shopping, which would warrant the outright dismissal of their petition below. Petitioner alleges that respondents' petition for change of venue before this Court and their petition for prohibition before the CA actually involve the same subject matter, parties, and issues - that of enjoining Judge Navidad from proceeding with the trial of the criminal case against them.[26] Moreover, these two proceedings have resulted in conflicting decisions, with this Court resolving to proceed with the case and with the CA enjoining the same.[27]

Petitioner also argues against the CA's ruling that Judge Navidad failed to personally determine the existence of probable cause. It said that although the judge adopted the findings of the prosecutors as to the sufficiency of evidence constituting probable cause, the language of the Order clearly reflects that the judge himself personally examined the records and found that there was probable cause for the issuance of warrants of arrest.[28] Moreover, the judge was correct in finding probable cause based on the sworn statements of the witnesses submitted to the court.[29] Petitioner avers that the CA disregarded the fact that the Information alleged conspiracy.[30] In any case, petitioner asserts that a perceived defect in the Information is not jurisdictional as the same may be amended anytime before arraignment or with leave of court after arraignment.[31]

Petitioner also claims that respondents had not shown any clear and unmistakable right to the relief they sought. It said that there are more than enough plain, speedy, and adequate remedies available to respondents. Their constitutional rights are amply protected in the enforcement of the warrants of arrest. They can likewise apply for bail or move to quash the allegedly defective Information.[32]

Petitioner also argues that this Court has laid down the rule that criminal prosecution cannot be enjoined, and any exception to this rule must be convincingly established.[33] On the other hand, the comparative injury to the People in permanently enjoining a criminal case is beyond any of respondents' speculative claim of injury.

Thus, petitioner is praying that the CA's May 8, 2007 Decision and October 8, 2007 Resolution be reversed and set aside, and the writ of injunction be dissolved.[34]

In their Comment, respondents assert that the trial court issued its February 20, 2007 Order in gross violation of the Constitution and prevailing jurisprudence on the matter.[35] Respondents claim that the trial court's violation is evident in the "indecent haste" with which it issued the Order and Warrants of Arrest, and in its own admission in the Order itself.[36] Respondents also maintain that the trial court acted whimsically, capriciously, and with grave abuse of discretion when it concluded that there was probable cause to issue warrants of arrest against respondents.[37] Respondents likewise assert that the trial court committed grave abuse of discretion when it reversed the finding of Judge Bandal, who first heard the case.[38]

The petition is impressed with merit.

Initially, we decide the issue of forum shopping raised by petitioner.

Petitioner maintains that respondents committed forum shopping when it filed a petition for change of venue before this Court and a petition for prohibition before the CA.

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari. It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[39]

Forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[40]

The elements of *res judicata* are: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be,

between the first and second actions, identity of parties, subject matter, and cause of action.[41]

A reexamination of the two actions in this case, in light of the foregoing jurisprudence, is in order.

In the petition for change of venue filed on February 19, 2007, respondents prayed for the transfer of the criminal case to any court in Metro Manila,[42] alleging that the prosecution was politically motivated and designed to hamper the plan of respondent Joseph Grey to run for a congressional seat in the May 2007 elections.[43] They contended that "it would be extremely pernicious to the interest of justice if trial of this case and (of) the other two cases are held in Samar, especially in the City of Calbayog, where the said (Congressman) Reynaldo Uy is a resident and absolutely wields power."[44] They also asked the Court to hold the proceedings in abeyance until after the May 14, 2007 elections.

In its August 22, 2007 Resolution, the Court denied the petition for transfer of venue for lack of merit. It also directed Judge Navidad to hear the case with dispatch.[45]

On March 5, 2007, while their petition for change of venue was pending before this Court, respondents filed a petition for certiorari before the CA. They prayed, first, for the issuance of a TRO and/or a writ of preliminary injunction to prohibit Judge Navidad from proceeding with Criminal Case No. 4916 and from causing the implementation of the warrants of arrest against respondents; and second, for the Court to set aside Judge Navidad's February 20, 2007 Order and the corresponding warrants he issued.[46] The TRO was granted on March 13, 2007, and the CA Decision making the same injunction permanent and setting aside the warrants of arrest was promulgated on May 8, 2007, a few days before the May 14, 2007 elections.

The CA correctly ruled that respondents were not guilty of forum shopping when they filed the two actions. Respondents raised different issues and sought different reliefs in the two actions, although both were grounded on the same set of facts.

The issue in the petition for change of venue is whether the trial of the case was to be moved to another court in light of respondents' allegations that the same was being used as a tool for their political persecution. On the other hand, the issue in the petition for certiorari before the CA was whether Judge Navidad gravely abused his discretion in issuing the February 20, 2007 Order and the warrants for respondents' arrest.

Thus, this Court's Resolution would not have amounted to *res judicata* that would bar the petition for certiorari before the CA.

We now resolve the substantive issues.

Respondents, in their petition before the CA, questioned the alleged lack of personal determination of probable cause by Judge Navidad in issuing the warrants for their arrest.

Judge Navidad's Order reads:

In this separate, independent constitutionally-mandated Inquiry conducted for the purpose of determining the sufficiency of the evidence constituting probable cause to justify the issuance of a Warrant of Arrest, the Court perforce, made a very careful and meticulous and (sic) review not only of the records but also the evidence adduced by the prosecution, particularly the sworn statements/affidavits of Mario Abella, Uriendo Moloboco and Edgar Pellina.[47]

The language of the Order clearly shows that the judge made his own personal determination of the existence of probable cause by examining not only the prosecutor's report but also his supporting evidence, consisting mainly of the sworn statements of the prosecution's witnesses.

It is well to remember that there is a distinction between the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest and the preliminary investigation proper which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing 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 - is the function of the investigating prosecutor.[48]

The duty of the judge to determine probable cause to issue a warrant of arrest is mandated by Article III, Section 2 of the Philippine Constitution:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In *Soliven v. Makasiar*,[49] the Court explained that this constitutional provision does not mandatorily require the judge to personally examine the complainant and her witnesses. Instead, he may opt to personally evaluate the report and supporting documents submitted by the prosecutor or he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses. Thus, in *Soliven*, we said:

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.[50]

What the law requires as personal determination on the part of a judge is that he should not rely solely on the report of the investigating prosecutor.[51] This means that the judge should consider not only the report of the investigating prosecutor but also the affidavit and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.[52]

The Court has also ruled that the personal examination of the complainant and his witnesses is not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest. The necessity arises only when there is an utter failure of the evidence to show the existence of probable cause.[53] Otherwise, the judge may rely on the report of the investigating prosecutor, provided that he likewise evaluates the documentary evidence in support thereof.

Contrary to respondents' claim, Judge Navidad did not gravely abuse his discretion in issuing the same.

A perusal of the assailed Order bears out this fact.

It was only through a review of the proceedings before the prosecutor that could have led Judge Navidad to determine that "the accused were given the widest latitude and ample opportunity to challenge the charge of

Murder which resulted, among others, (in) a filing of a counter-charge of Perjury." [54] Likewise, his personal determination revealed no improper motive on the part of the prosecution and no circumstance which would overwhelm the presumption of regularity in the performance of official functions. [55] Thus, he concluded that the previous Order, denying the motion for the issuance of warrants of arrest, was not correct. [56]

These statements sufficiently establish the fact that Judge Navidad complied with the constitutional mandate for personal determination of probable cause before issuing the warrants of arrest.

The CA likewise overlooked a fundamental rule we follow in this jurisdiction. It is an established doctrine that injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society. [57]

However, it is also true that various decisions of this Court have laid down exceptions to this rule, among which are:

- a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano*, et al., L-19272, January 25, 1967, 19 SCRA 95);
- b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304; *Hernandez v. Albano*, supra; *Fortun v. Labang*, et al., L-38383, May 27, 1981, 104 SCRA 607);
- c. When there is a pre-judicial question which is sub[-]judice (*De Leon v. Mabanag*, 70 Phil. 202);
- d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62);
- e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389);
- f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140);
- g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, L-25795, October 29, 1966, 18 SCRA 616);
- h. Where there is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);
- i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J. [1953], cited in *Ra×joa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, et al. v. City Fiscal*, L-60033, April 4, 1984, 128 SCRA 577); x x x
- j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga v. Pa×jo*, et al., L-59524, February 18, 1985, 134 SCRA 438); and]
- [k.] Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez v. Castelo*, L-6374, August 1, 1953). [58]

Respondents insisted that political persecution by their political rivals was the underlying reason for the filing of criminal charges against them, and used this as basis for asking the appellate court to stop the proceedings in the trial court.

Indeed, this Court has recognized that, in certain instances, political persecution or political motives may have impelled the filing of criminal charges against certain political rivals. But this Court has also ruled that any allegation that the filing of the charges is politically motivated cannot justify the prohibition of a criminal prosecution if there is otherwise evidence to support the charges. [59]

In this case, the judge, upon his personal examination of the complaint and evidence before him, determined that there was probable cause to issue the warrants of arrest after the provincial prosecution, based on the affidavits presented by complainant and her witnesses, found probable cause to file the criminal Information. This finding of the Provincial Prosecutor was affirmed by the Secretary of Justice.

To establish political harassment, respondents must prove that the public prosecutor, not just the private complainant, acted in bad faith in prosecuting the case or has lent himself to a scheme that could have no other purpose than to place respondents in contempt and disrepute.[60] It must be shown that the complainant possesses the power and the influence to control the prosecution of cases.[61]

Likewise, the allegation that the filing of the complaint was politically motivated does not serve to justify the nullification of the informations where the existence of such motive has not been sufficiently established nor substantial evidence presented in support thereof.[62]

Other than their own self-serving claims, respondents have adduced absolutely no proof of the perceived political persecution being waged by their rivals. Respondents have not shown any evidence of such a grand design. They have not alleged, much less proved, any ill motive or malice that could have impelled the provincial prosecutor, the judge, and even the Secretary of Justice to have respectively ruled in the way each of them did. In short, respondents are holding tenuously only on the hope that this Court will take them at their word and grant the relief they pray for. This Court, however, cannot anchor its ruling on mere allegations.

Needless to say, a full-blown trial is to be preferred to ferret out the truth.[63] If, as respondents claim, there is no evidence of their culpability, then their petition for bail would easily be granted. Thereafter, the credibility of the prosecution's and the accused's respective evidence may be tested during the trial. It is only then that the guilt or innocence of respondents will be determined. Whether the criminal prosecution was merely a tool for harassment or whether the prosecution's evidence can pass the strict standards set by the law and withstand the exacting scrutiny of the court will all be resolved at the trial of the case.

The criminal Information in this case was filed four years ago and trial has yet to begin. The victim's kin, indeed, all the parties, are awaiting its resolution. Any further delay will amount to an injustice.

WHEREFORE, the foregoing premises considered, the Court of Appeals Decision dated May 8, 2007 and Resolution dated October 8, 2007 in CA-G.R. SP No. 02558 are hereby REVERSED and SET ASIDE, and the Permanent Injunction is hereby DISSOLVED. The Order of the Regional Trial Court of Calbayog City, Samar, dated February 20, 2007, is hereby REINSTATED. The Regional Trial Court of Calbayog City, Samar, is DIRECTED to proceed with hearing, and to decide Criminal Case No. 4916 with dispatch.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Rollo, pp. 33-35.

[2] Penned by Associate Justice Francisco P. Acosta, with Executive Justice Arsenio J. Magpale and Associate Justice Agustin S. Dizon, concurring; id. at 36-59.

[3] Rollo, pp. 60-67.

[4] Id. at 5.

[5] Id. at 41.

- [6] Id. at 5.
- [7] Id. at 134-136.
- [8] Id. at 5-6.
- [9] Id. at 145-146.
- [10] Id. at 42.
- [11] Id. at 6.
- [12] Id. at 7.
- [13] Id. at 172-173.
- [14] Id. at 174-177.
- [15] Id. at 178-214.
- [16] Id. at 181.
- [17] Id. at 184.
- [18] Id. at 33-35.
- [19] Id. at 36-59.
- [20] Id. at 49-50.
- [21] Id. at 49-51.
- [22] Id. at 51.
- [23] Id. at 51-52.
- [24] Id. at 53.
- [25] Id. at 60-67.
- [26] Id. at 10.
- [27] Id. at 12.
- [28] Id. at 14.
- [29] Id. at 16.
- [30] Id. at 20.
- [31] Id. at 22.
- [32] Id.
- [33] Id. at 24-25.
- [34] Id. at 29.
- [35] Id. at 269.
- [36] Id. at 271.

[37] Id. at 275.

[38] Id. at 284.

[39] Cruz v. Caraos, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 520-521, citing Government Service Insurance System v. Bengson Commercial Buildings, Inc., 426 Phil. 111, 125 (2002).

[40] Id. at 522.

[41] Ayala Land, Inc. v. Valisno, 381 Phil. 518, 528 (2000).

[42] Rollo, p. 169.

[43] Id. at 167.

[44] Id. at 168.

[45] Id. at 172.

[46] Id. at 212.

[47] Id. at 174-175. (Emphasis supplied.)

[48] AAA v. Carbonell, G.R. No. 171465, June 8, 2007, 524 SCRA 496, 509, citing People v. Inting, 187 SCRA 788, 792-793 (1990).

[49] G.R. Nos. L-82585, L-82827, and L-83979, November 14, 1988, 167 SCRA 393.

[50] Id. at 398.

[51] AAA v. Carbonell, supra note 48, at 509 .

[52] Okabe v. Gutierrez, G.R. No. 150185, May 27, 2004, 429 SCRA 685, 707.

[53] AAA v. Carbonell, supra note 48, at 509, citing Webb v. Hon. De Leon, 317 Phil. 758, 794 (1995).

[54] Rollo, p. 175.

[55] Id. at 177.

[56] Id. at 176.

[57] Asutilla v. PNB, 225 Phil. 40, 43 (1986).

[58] Brocka v. Enrile, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189, citing Regalado, Remedial Law Compendium (1988 ed.), p. 188.

[59] Paredes, Jr. v. Hon. Sandiganbayan, 322 Phil. 709, 732-733 (1996).

[60] Id. at 736. (Citations omitted.)

[61] Id.

[62] Socrates v. Sandiganbayan, 324 Phil. 151, 167 (1996).

[63] AAA v. Carbonell, supra note 48, at 511, citing Abugotal v. Judge Tiro, 160 Phil. 884, 890 (1975).

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