

ELVIRA O. ONG, PETITIONER, VS. JOSE CASIM GENIO, RESPONDENT.

G.R. No. 182336. December 23, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Resolution[2] dated January 7, 2008.

Petitioner Elvira O. Ong (petitioner) filed a criminal complaint against respondent Jose Casim Genio (respondent) for Robbery which was dismissed by the City Prosecutor of Makati City. However, pursuant to the Resolutions dated September 15, 2006[3] and October 30, 2006[4] of the Department of Justice, respondent was charged with the crime of Robbery in an Information[5] which reads:

That in or about and sometime the month of January, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously take, divest and carry away kitchen and canteen equipment as well as her personal things valued at Php 700,000.00, belonging to complainant, ELVIRA O. ONG, to the damage and prejudice of the said owner in the aforementioned amount of Php 700,000.00.

CONTRARY TO LAW.

On November 21, 2006, respondent filed a Motion to Dismiss the Case for Lack of Probable Cause Pursuant to Sec. 6(a),[6] Rule 112 of the Rules of Court and, in View of Compelling Grounds for the Dismissal of the Case to Hold in Abeyance the Issuance of the Warrant of Arrest[7] (Motion to Dismiss). Petitioner filed an Opposition[8] dated December 11, 2006 to respondent's Motion to Dismiss.

In its Order[9] of December 15, 2006, the Regional Trial Court (RTC) of Makati City, Branch 56, dismissed the case because the other elements of

the crime of Robbery, specifically the elements of intent to gain, and either

violence against or intimidation of any person or force upon things, were not specifically alleged in the Information filed against respondent.

Despite the dismissal of the case, respondent filed a Partial Motion for Reconsideration[10] dated January 2, 2007, reiterating that the Information should be dismissed in its entirety for lack of probable cause. Petitioner filed her Opposition[11] to this motion on February 15, 2007.

In its Order[12] dated February 12, 2007, the RTC granted respondent's Partial Motion for Reconsideration and dismissed the case for lack of probable cause pursuant to Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure. The RTC held that the evidence on record failed to establish probable cause to charge respondent with the crime of Robbery.

On March 6, 2007, petitioner filed her Motion for Reconsideration,[13] claiming that the RTC erred in relying on

Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure, since the said provision relates to the issuance of a warrant of arrest, and it does not cover the determination of probable cause for the filing of the Information against respondent, which is executive in nature, a power primarily vested in the Public Prosecutor.

In its Order[14] dated June 1, 2007, the RTC denied petitioner's Motion for Reconsideration, holding that the aforementioned provision authorizes

the RTC to evaluate not only the resolution of the prosecutor who conducted the preliminary investigation and eventually filed the Information in court, but also the evidence upon which the resolution was based. In the event that the evidence on record clearly fails to establish probable cause, the RTC may dismiss the case.

Aggrieved, petitioner filed a Petition for Certiorari and Mandamus[15] before the CA on August 28, 2007. Respondent filed a Motion to Dismiss[16] the petition, raising the issue of lack of personality of petitioner to appeal the dismissal of the criminal case, because the authority to do so lies exclusively with the State as represented by the Office of the Solicitor General (OSG). In its Resolution[17] dated September 10, 2007, the CA observed that the People of the Philippines was impleaded as petitioner without showing, however, the OSG's participation. Thus, the CA ordered petitioner to furnish the OSG with a copy of the Petition, and the latter to comment thereon.

On October 22, 2007, the OSG filed its Comment,[18] taking the stand of respondent that only the Solicitor General can bring or defend actions on behalf of the People of the Philippines filed before the CA or the Supreme Court. The OSG submitted that, for being fatally defective, the said Petition should be dismissed insofar as the criminal aspect was concerned, without prejudice to the right of petitioner to pursue the civil aspect of the case.

On January 7, 2008, the CA rendered its Resolution,[19] dismissing the case without prejudice to the filing of a petition on the civil aspect thereof on the basis of the arguments raised by both respondent and the OSG. Undaunted, petitioner filed a Motion for Reconsideration[20] which the CA denied in its Resolution[21] dated March 27, 2008.

Hence this Petition raising the following issues:

A.

WHETHER THE PETITIONER AS THE PRIVATE OFFENDED PARTY IN A CRIMINAL CASE HAS NO PERSONALITY TO ELEVATE THE CASE TO THE COURT OF APPEALS WITHOUT THE CONFORMITY OF THE OFFICE OF THE SOLICITOR GENERAL EVEN BEFORE THE ACCUSED IS ARRAIGNED

B.

WHETHER THE REGIONAL TRIAL COURT HAS AUTHORITY TO DISMISS THE INFORMATION ON THE GROUND OF LACK OF PROBABLE CAUSE CONTRARY TO THE FINDINGS OF THE SECRETARY OF THE DEPARTMENT OF JUSTICE

C.

WHETHER THE REGIONAL TRIAL COURT HAS THE AUTHORITY TO DISMISS THE INFORMATION ON THE GROUND OF LACK OF PROBABLE CAUSE WHEN IT HAS PREVIOUSLY CONCLUDED THAT THE SAME INFORMATION IS DEFECTIVE[.][22]

The instant Petition is bereft of merit.

Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall

represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. Likewise, the Solicitor General shall represent the Government in this Court and the CA in all criminal proceedings, thus:

SEC. 35. Powers and Functions. -- The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

This doctrine is laid down in our ruling in *Heirs of Federico C. Delgado and Annalisa Pesico v. Luisito Q. Gonzalez and Antonio T. Buenaflor*,^[23] *Cariño v. de Castro*,^[24] *Mobilia Products, Inc. v. Umezawa*,^[25] *Narciso v. Sta. Romana-Cruz*,^[26] *Perez v. Hagonoy Rural Bank, Inc.*,^[27] and *People v. Santiago*,^[28] where we held that only the OSG can bring or defend actions on behalf of the Republic or represent the People or the State in criminal proceedings pending in this Court and the CA.

While there may be rare occasions when the offended party may be allowed to pursue the criminal action on his own behalf,^[29] as when there is a denial of due process, this exceptional circumstance does not obtain in the instant case.

Before the CA, the OSG itself opined that the petition therein was fatally defective for having been filed without the OSG's participation. Before this Court, petitioner failed to advance any justification or excuse why she failed to seek the assistance of the OSG when she sought relief from the CA, other than the personal belief that the OSG was burdened with so many cases. Thus, we find no reversible error to disturb the CA's ruling.

Petitioner, however, is not without any recourse. In *Rodriguez v. Gadiane*,^[30] we held:

It is well-settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.

In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant

should not bring the action in the name of the People of the Philippines. The action may be prosecuted in name of said complainant.^[31]

On this ground alone, the instant Petition fails. Even on the issue of the RTC's dismissal of the case, the Petition

ought to be denied.

Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure clearly provides:

SEC. 6. When warrant of arrest may issue. -- (a) By the Regional Trial Court. -- Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.[32]

Pursuant to the aforementioned provision, the RTC judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.[33]

It bears stressing that the judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.[34] This, the RTC judge clearly complied with in this case.

WHEREFORE, the Petition is DENIED. The Resolution of the Court of Appeals dated January 7, 2008 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Peralta, and Del Castillo,[*] JJ., concur.

[*] Additional member per Special Order No. 805 dated December 4, 2009.

[1] Rollo, pp. 3-20.

[2] Particularly docketed as CA-G.R. SP No. 100311, penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; id. at 23-24.

[3] CA rollo, pp. 18-20.

[4] Id. at 21-22.

[5] Id. at 23.

[6] The parties and the RTC cited this section as Section 5, when in fact all of them were referring to Section 6 of Rule 112 of the Rules.

[7] Id. at 24-36.

[8] CA rollo, pp. 37-41.

[9] Issued by Judge Reynaldo M. Laigo; id. at 43-44.

- [10] CA rollo, pp. 45-63.
- [11] Id. at 64-66.
- [12] Id. at 14-15.
- [13] Id. at 67-72.
- [14] Id. at 16-17.
- [15] Id. at 2-13.
- [16] Id. at 81-89.
- [17] Id. at 75-76.
- [18] Id. at 116-120.
- [19] Id. at 122-123.
- [20] Id. at 124-127.
- [21] Id. at 138-139.
- [22] Supra note 1, at 6.
- [23] G.R. No. 184337, August 7, 2009.
- [24] G.R. No. 176084, April 30, 2008, 553 SCRA 688.
- [25] G.R. Nos. 149357 and 149403, March 4, 2005, 452 SCRA 736.
- [26] G.R. No. 134504, March 17, 2000, 328 SCRA 505.
- [27] G.R. No. 126210, March 9, 2000, 327 SCRA 588.
- [28] G.R. No. 80778, June 20, 1989, 174 SCRA 143.
- [29] Merciales v. Court of Appeals, 429 Phil. 70 (2002).
- [30] G.R. No. 152903, July 17, 2006, 495 SCRA 368, 374, citing *People v. Santiago*, id.
- [31] Emphasis supplied.
- [32] Emphasis supplied.
- [33] In Re: Mino v. Navarro, A.M. No. MTJ-06-1645, August 28, 2007, 531 SCRA 271, 279.
- [34] Concerned Citizen of Maddela v. Dela Torre-Yadao, A.M. No. RTJ-01-1639, November 29, 2002, 393 SCRA 217, 223.

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