

P/C INSP. LAWRENCE B. CAJIPE, P/C INSP. JOEL L. MENDOZA, P/C INSP. GERARDO B. BALATUCAN, PO3 JOLITO P. MAMANAO, JR., PO3 FERNANDO REY S. GAPUZ, PO2 EDUARDO G. BLANCO, PO2 EDWIN ...

G.R. No. 203605. April 23, 2014

Ponente: ABAD, J.

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ABAD, J.:

As narrated by the Court of Appeals (CA), on July 28, 2009 Lilian I. De Vera (Lilian) filed a complaint before the Department of Justice (DOJ) charging with multiple murder the following Philippine National Police (PNP) officers connected with the the PNP Highway Patrol Group (HPG): petitioners P/C Insp. Lawrence B. Cajipe, P/C Insp. Joel L. Mendoza, P/C Insp. Gerardo B. Balatucan, PO3 Jolito P. Mamanao, Jr., PO3 Fernando Rey S. Gapuz, PO2 Eduardo G. Blanco, PO2 Edwin Santos, and PO1 Josil Rey I. Lucena (collectively, petitioner HPG officers). The other LIPG members were P/C Supt. Perfecto Palad and P/C Supt. Eleuterio Gutierrez, Jr. Another group of accused consisted of police officers from the PNP Special Action Force (SAF).[1]

In her complaint Lilian alleged that joint elements of the SAF and the HPG conspired in carrying out a plan to kill her husband, Alfonso "Jun" S. De Vera (Jun) and their 7-year-old daughter, Lia Allana. Lilian said that at around 9:30 p.m. on December 5, 2008 she called Jun to tell him that she was on her way to Pasay City to meet him and their daughter. She got to Pasay City but the two did not show up. After an hour, Lilian called their house helper who assured her that Jun and Lia had already left. Lilian tried calling Jun but she got no answer. She again called their house helper, who informed her that there had been a shootout in their subdivision.[2]

Lilian decided to go home. When she arrived at the entrance of their subdivision, the police had blocked the area and did not allow civilians to pass through. She got a call from her house helper who told her that Jun and Lia had been involved in the shootout. A certain Hilario Indiana approached Lilian and advised her to go to the hospital where Lia had been rushed. When she got there, she learned that Lia had died of gunshot wound on the head. Jun was found dead near a passenger jeepney with a gunshot wound on his head.[3]

Witnesses to the shootout said that Jun and Lia were riding in his Isuzu Crosswind van when police officers wearing Regional SAF vests suddenly fired at the van. Jun got out, went to the passenger side, and tried to carry Lia out to safety as she had been wounded. The police officers went after Jun, however, and shot him on the head.

On December 28, 2009 the DOJ issued a resolution after preliminary investigation finding probable cause to indict all the police officers involved in the police action that led to the shooting of Jun and Lia for two counts of murder. On March 15, 2010 the DOJ filed the information before the Regional Trial Court (RTC) of Paranaque City in Criminal Cases 10-0280 and 10-0281. On the following day, March 16, petitioner HPG officers filed an omnibus motion for judicial determination of probable cause with a prayer to hold in abeyance the issuance of the warrants for their arrest. They also sought the annulment of the DOJ resolution on the ground of violation of their constitutional rights. Further, they asked that the information be quashed on the ground that the facts it alleged did not constitute an offense.[4]

On June 16, 2010 the RTC dismissed the case against petitioner HPG officers for lack of probable cause against them, given that the witnesses made no mention of seeing anyone from the HPG group taking part in the shooting and killing of Jun and his daughter. Instead, the RTC found that the evidence tends to show that petitioner HPG officers were requested and acted merely as blocking force in a legitimate police operation and Lilian had not refuted this. On the other hand the RTC issued an arrest warrant for the accused SAF officers, having found probable cause against them. Lilian moved for reconsideration of the dismissal order covering petitioner HPG officers but the RTC denied the same on September 24, 2010.[5]

On January 21, 2011 the Office of the Solicitor General (OSG) filed a petition for certiorari under Rule 65 before the Court of Appeals (CA) in CA-G.R. SP 117756 alleging grave abuse of discretion on the RTC's part.[6] On June 15, 2012 the CA granted the petition. It ruled that the RTC gravely abused its discretion in failing to evaluate the sworn statements of the witnesses on whom the DOJ relied on. The RTC based its finding of lack of probable cause primarily on the absence of evidence directly linking the petitioner HPG officers to the shooting of the victim and their physical presence at the crime scene.[7]

In a special civil action filed before it, however, the CA pointed out that Indiana and Ronald Castillo executed affidavits stating that petitioner HPG officers joined the SAF officers in pursuing and shooting Jun while he was bringing Lia to a safer place. The CA said that, with this evidence, it is for the petitioner HPG officers to rebut such testimonies at the trial.[8] The CA thus ordered the issuance of warrants of arrest against the petitioner HPG officers.[9] On October 5, 2012 the CA denied the motion for reconsideration of its decision and the urgent motion to quash warrants of arrest and/or motion to suspend the implementation of the warrants of arrest,[10] hence, this petition.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in granting the OSG's petition for certiorari under Rule 65, given that the RTC's order of dismissal is a final and appealable order;
2. Whether or not the CA erred in counting the prescriptive period for filing a Rule 65 petition from the time of receipt of the court order by the OSG rather than by the city prosecutor's office; and
3. Whether or not the CA erred in finding grave abuse of discretion on the part of the RTC judge in holding that no probable cause exists against petitioner HPG officers and in dismissing the criminal charge against them.

The Court's Rulings

The Court will first resolve the procedural issues.

The RTC judge was within his powers to dismiss the case against petitioner HPG officers. Section 6, Rule 112 of the Rules of Criminal Procedure provides that the judge "may immediately dismiss the case if the evidence on record clearly fails to establish probable cause." The CA should have denied the People's petition for special civil action of certiorari that assails the correctness of the order of dismissal since Section 1 of Rule 65 provides that such action is available only when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law."

The fact, however, is that Section 1, Rule 122 of the same rules provides that an appeal may be taken in a criminal action from a judgment or final order like the RTC's order dismissing the case against petitioner HPG officers for lack of probable cause. It is a final order since it disposes of the case, terminates the proceedings, and leaves the court with nothing further to do with respect to the case against petitioner HPG officers. The Court had made a

similar pronouncement in *Santos v. Orda, Jr.*,^[11] Of course, the People may refile the case if new evidence adduced in another preliminary investigation will support the filing of a new information against them. But that is another matter. For now, the CA clearly erred in not denying the petition for being a wrong remedy.

Petitioner HPG officers point out that, assuming the propriety of the filing of a special civil action of certiorari against the RTC's order of dismissal, the People had sixty days from receipt of such order within which to file the action. Here, the People filed its petition for certiorari 112 days from receipt of the dismissal order by the city prosecutor of Paranaque, clearly beyond the 60-day period allowed for such action.

The OSG contends, however, that the reckoning point should be from the date the Department of Justice or the court gave it notice of the order of dismissal since, as held in *Bautista v. Cuneta-Pangilinan*,^[12] the OSG alone has the authority to represent the People before the CA. But such a proposition is unfair. There is no reason for the RTC to serve copy of its judgments or final orders upon the OSG since it does not enter its appearance in criminal cases before it.

In case of permissible appeals from a final order in a criminal action, the public prosecutor who appears as counsel for the People in such an action and on whom a copy of the final order is thus served, may file a notice of appeal within the appropriate time since it is a notice addressed to the RTC and not to the CA. Only the Office of the Solicitor General, however, may pursue the appeal before the CA by filing the required appellant's brief or withdraw the same.

In special civil actions such as that taken by the OSG before the CA, the public prosecutor's duty, if he believes that a matter should be brought by special civil action before an appellate court, is to promptly communicate the facts and his recommendation to the OSG, advising it of the last day for filing such an action. There is no reason the OSG cannot file the petition since the People is given sixty days from notice to the public prosecutor within which to file such an action before the CA or this Court.

Since the OSG filed its petition for certiorari under Rule 65 on behalf of the People 112 days from receipt of the dismissal order by the city prosecutor of Paranaque, the petition was filed out of time. The order of dismissal is thus beyond appellate review.

Although a purely academic exercise in view of its above rulings, the Court has taken a look into the merit of the RTC's order of dismissal since it clashes with the findings of the DOJ investigating prosecutors.

The OSG relies on the affidavits of Indiana and Ronald V. Castillo (Castillo) in claiming that probable cause exists against petitioner HPG officers.

In the sworn statement he made before the police on December 9, 2008 Indiana said: "x x x. Tapos narinig ko ang sigaw 'Bro ang driver tumakas andyan sa jeep, dnong nilapitan ng isang naka-Vest na mero pangalan sa likod RSAF at nakabunot at pinuntukan ang driver sa ulo. Tapos nagsalita ang nagsabing RSAF 'Bro may bata pala.' Kinuha ng RSAF ang bata at dinala sa kanilang sasakyan na kulay puti ng sasakyan. x x x."^[13]

On the other hand, witness Castillo said in his sworn statement: "x x x. May dumaang sasakyangpapuntang gate ng UPS IV, mayroong sumigaw na mga pulis PLATIN NYO, PLATIN NYO.' Biglang hinabol ng dalawang pulis ang nasabing sasakyan at pinagbabaril. May ilang sandali ay bumalik ang dalawang pulis at sinabi nila ng 'NAPATAY NA NAMIN ANG DRIVER NG GATE AWAY CAR, ANDOON SA TABI NG JEEP'."^[14]

It is clear from Indiana's testimony that the man he saw shoot Jun was an RSAF officer, identified by his assault vest and accompanied by another RSAF officer who also wore such a vest. Castillo did not see the act of shooting but confirmed that two police officers gave chase and took shots at the fleeing vehicle then turned back to

announce to their companions that they had killed the driver of the get-away car.

The HPG men belonged to another unit and there is no claim that they wore another unit's vest. More telling is the crime laboratory report which revealed that none of the HPG operatives discharged their firearms during the shootout.[15] It did not also help the prosecution's case that, per Indiana's testimony, the SAF police officers involved in the shootout carried long firearms, specifically M16 rifle, M16 baby armalite, and M14.[16] But the National Police Commission issued two certifications dated January 14 and 19, 2010 to the effect that the petitioner HPG officers had not been issued long firearms from 2007 up to 2010.[17]

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[18] The prosecution evidence fails to establish probable cause against petitioner HPG officers.

WHEREFORE, the Court REVERSES the Court of Appeals Decision dated June 15, 2012 and Resolution dated October 5, 2012 in CA-G.R. SP 117756 and AFFIRMS the Order of the Regional Trial Court of Paranaque City in Criminal Cases 10-0280 and 10-0281 that dismissed the case against petitioners. The Court ORDERS the DISMISSAL of the charge against the petitioners P/C Insp. Lawrence B. Cajipe, P/C Insp. Joel L. Mendoza, P/C Insp. Gerardo B. Balatucan, PO3 Jolito P. Mamanao, Jr., PO3 Fernando Rey S. Gapuz, PO2 Eduardo G. Blanco, PO2 Edwin Santos, and PO1 Josil Rey I. Lucena. The Court further ORDERS the withdrawal of the warrants for their arrest.

SO ORDERED.

Velasco, Jr., (Chairperson) Peralta, Mendoza, and Leonen, JJ., concur.

May 15, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on April 23, 2014 a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 15, 2014 at 1:40 p.m.

Very truly yours,

LUCITA ABJELINA SORIANO
Division Clerk of Court

By:

(SGD.)
WILFMEDO V. LAEITAN
Deputy Division Clerk of Court

[1] Rollo, p. 59.

[2] Id. at 59-60.

[3] Id. at 60.

- [4] Id. at 61-62.
- [5] Id. at 62-63.
- [6] Id. at 64.
- [7] Id. at 70-71.
- [8] Id.
- [9] Id. at 72-73.
- [10] Id. at 78-85.
- [11] G.R. No. 189402, May 6, 2010, 620 SCRA 375.
- [12] G.R. No. 189754, October 24, 2012, 684 SCRA 521.
- [13] Rollo, p. 289,
- [14] Id. at 292.
- [15] Id. at 166.
- [16] Id. at 289.
- [17] Id. at 136-137.
- [18] *Bernardo v. Tan*, G.R. No. 185491, July 11, 2012, 676 SCRA 288.

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