



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

LILY SY,

Petitioner,

G.R. No. 171579

Present:

-versus-

VELASCO, JR., J., *Chairperson*,  
BRION,\*  
PERALTA,  
ABAD, and  
PEREZ,\*\* JJ.

HON. SECRETARY OF JUSTICE  
MA. MERCEDITAS N.  
GUTIERREZ, BENITO  
FERNANDEZ GO, BERTHOLD  
LIM, JENNIFER SY, GLENN  
BEN TIAK SY and MERRY SY,  
Respondents.

Promulgated:

14 November 2012

X-----X

*Maquiano*

DECISION

PERALTA, J.:

In a Complaint-Affidavit<sup>1</sup> filed on August 7, 2000, petitioner Lily Sy (petitioner) claimed that in the morning of December 16, 1999, respondents Benito Fernandez Go (Benito) and Glenn Ben Tiak Sy (Glenn), together with “Elmo,” a security guard of Hawk Security Agency, went to petitioner’s residence at the 10<sup>th</sup> Floor, Fortune Wealth, 612 Elcano St., Binondo, Manila and forcibly opened the door, destroyed and dismantled the door lock then replaced it with a new one, without petitioner’s consent.<sup>2</sup> She, likewise, declared that as a diversionary ruse, respondent Jennifer Sy

\* Designated Acting Member, in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated January 26, 2012.

\*\* Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.

<sup>1</sup> OCP records, pp. 127-130.

<sup>2</sup> *Id.* at 129.

*N*

(Jennifer) was at the lobby of the same building who informed petitioner's helper Geralyn Juanites (Geraldyn) that the elevator was not working.<sup>3</sup> Glenn and Benito's act of replacing the door lock appeared to be authorized by a resolution of Fortune Wealth Mansion Corporation's Board of Directors, namely, respondents Glenn, Jennifer, William Sy (William), Merlyn Sy (Merlyn), and Merry Sy (Merry).<sup>4</sup>

In the evening of the same date, petitioner supposedly saw Benito, Glenn, Jennifer, Merry and respondent Berthold Lim (Berthold) took from her residence numerous boxes containing her personal belongings without her consent and, with intent to gain, load them inside a family-owned van/truck named "Wheels in Motion."<sup>5</sup> The same incident supposedly happened in January 2000 and the "stolen" boxes allegedly reached 34,<sup>6</sup> the contents of which were valued at ₱10,244,196.00.<sup>7</sup>

Respondents Benito and Berthold denied the accusations against them. They explained that petitioner made the baseless charges simply because she hated their wives Merry and Jennifer due to irreconcilable personal differences on how to go about the estates of their deceased parents then pending before the Regional Trial Court (RTC) of Manila, Branch 51.<sup>8</sup> They also manifested their doubts on petitioner's capability to acquire the personal belongings allegedly stolen by them.<sup>9</sup>

Merry, Glenn, and Jennifer, on the other hand, claimed that petitioner's accusations were brought about by the worsening state of their personal relationship because of misunderstanding on how to divide the

---

<sup>3</sup> *Id.* at 129.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 128

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 127.

<sup>8</sup> *Id.* at 103.

<sup>9</sup> *Id.* at 102.

estate of their deceased father.<sup>10</sup> They also pointed out that the whole condominium building where the alleged residence of petitioner is located, is owned and registered in the name of the corporation.<sup>11</sup> They explained that the claimed residence was actually the former residence of their family (including petitioner).<sup>12</sup> After their parents' death, the corporation allegedly tolerated petitioner to continuously occupy said unit while they, in turn, stayed in the other vacant units leaving some of their properties and those of the corporation in their former residence.<sup>13</sup> They further stated that petitioner transferred to the ground floor because the 10<sup>th</sup> floor's electric service was disconnected.<sup>14</sup> They explained that they changed the unit's door lock to protect their personal belongings and those of the corporation as petitioner had initially changed the original lock.<sup>15</sup> They supported their authority to do so with a board resolution duly issued by the directors. They questioned petitioner's failure to report the alleged incident to the police, considering that they supposedly witnessed the unlawful taking.<sup>16</sup> They thus contended that petitioner's accusations are based on illusions and wild imaginations, aggravated by her ill motive, greed for money and indiscriminate prosecution.<sup>17</sup>

In the Resolution<sup>18</sup> dated September 28, 2001, Assistant City Prosecutor Jovencio T. Tating (ACP Tating) recommended that respondents Benito, Berthold, Jennifer, Glenn and Merry be charged with Robbery In An Uninhabited Place; and that the charges against William Go<sup>19</sup> (the alleged new owner of the building), and "Elmo Hubio" be dismissed for

---

<sup>10</sup> *Id.* at 100.

<sup>11</sup> *Id.* at 100.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 99.

<sup>15</sup> *Id.* 98.

<sup>16</sup> *Id.* at 95.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 145-149.

<sup>19</sup> Also referred to as William Yao in the records.

insufficiency of evidence.<sup>20</sup> ACP Tating found that the subject condominium unit is in fact petitioner's residence and that respondents indeed took the former's personal belongings with intent to gain and without petitioner's consent. He further held that respondents' defenses are not only contradictory but evidentiary in nature.<sup>21</sup> The corresponding Information<sup>22</sup> was filed before the RTC of Manila, docketed as Criminal Case No. 02-199574 and was raffled to Branch 19. On motion of Jennifer, Glenn and Merry, the RTC ordered a reinvestigation on the ground of newly-discovered evidence consisting of an affidavit of the witness.<sup>23</sup> This notwithstanding, the Office of the City Prosecutor (OCP) sustained in a Resolution<sup>24</sup> dated September 23, 2002 its earlier conclusion and recommended the denial of respondents' motion for reconsideration.

When elevated before the Secretary of Justice, then Secretary Simeon A. Datumanong (the Secretary) reversed and set aside<sup>25</sup> the ACP's conclusions and the latter was directed to move for the withdrawal of the Information against respondents.<sup>26</sup> The Secretary stressed that the claimed residence of petitioner is not an uninhabited place under the penal laws, considering her allegation that it is her residence.<sup>27</sup> Neither can it be considered uninhabited under Article 300 of the Revised Penal Code (RPC), since it is located in a populous place.<sup>28</sup> The Secretary opined that the elements of robbery were not present, since there was no violence against or intimidation of persons, or force upon things, as the replacement of the door lock was authorized by a board resolution.<sup>29</sup> It is likewise his conclusion that the element of taking was not adequately established as petitioner and her

---

<sup>20</sup> OCP records, p. 145.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 150-151.

<sup>23</sup> *Id.* at 163.

<sup>24</sup> *Id.* at 186.

<sup>25</sup> Embodied in a Resolution dated September 24, 2003.

<sup>26</sup> OCP records, p. 189.

<sup>27</sup> *Id.* at 192.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 190.

helper were not able to see the taking of anything of value. If at all there was taking, the Secretary concluded that it was made under a claim of ownership.<sup>30</sup> Petitioner's motion for reconsideration was denied on June 17, 2004.<sup>31</sup>

Aggrieved, petitioner went up to the Court of Appeals (CA) in a special civil action for *certiorari* under Rule 65 of the Rules of Court. On December 20, 2004, the CA rendered a Decision<sup>32</sup> granting the petition and, consequently, setting aside the assailed Secretary's Resolutions and reinstating the OCP's Resolution with the directive that the Information be amended to reflect the facts as alleged in the complaint that the robbery was committed in an inhabited place and that it was committed through force upon things.<sup>33</sup>

The CA held that petitioner had sufficiently shown that the Secretary gravely abused her discretion in reversing the OCP's decision.<sup>34</sup> While recognizing the mistake in the designation of the offense committed because it should have been robbery in an inhabited place, the CA held that the mistake can be remedied by the amendment of the Information.<sup>35</sup> Indeed, since the element of violence against or intimidation of persons was not established, the same was immaterial as the crime was allegedly committed with force upon things.<sup>36</sup> Thus, it held that petitioner adequately showed that at the time of the commission of the offense, she was in possession of the subject residential unit and that respondents should not have taken the law into their own hands if they indeed had claims over the personal properties

---

<sup>30</sup> *Id.* at 188-189.

<sup>31</sup> *Id.* at 196-197.

<sup>32</sup> Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring; *id.* at 138-165.

<sup>33</sup> OCP records, p. 156.

<sup>34</sup> *Rollo*, pp. 147-148.

<sup>35</sup> *Id.* at 148.

<sup>36</sup> *Id.* at 149-150.

inside the subject unit.<sup>37</sup> It also did not give credence to the newly-discovered evidence presented by respondents, because the affidavit was executed two years after the filing of petitioner's complaint.<sup>38</sup> Lastly, the CA held that the element of taking was shown with circumstantial evidence.<sup>39</sup>

On motion of respondents, the CA rendered an Amended Decision<sup>40</sup> dated May 9, 2005, setting aside its earlier decision and reinstating the DOJ Secretaries' Resolutions.<sup>41</sup> It concluded that as part-owner of the entire building and of the articles allegedly stolen from the subject residential unit, the very same properties involved in the pending estate proceedings, respondents cannot, as co-owners, steal what they claim to own and thus cannot be charged with robbery.<sup>42</sup> It continued and held that assuming that the door was forced open, the same cannot be construed as an element of robbery as such was necessary due to petitioner's unjustified refusal to allow the other co-owners to gain access to the premises even for the lawful purpose of allowing prospective buyers to have a look at the building.<sup>43</sup> Petitioner's motion for reconsideration was denied in the assailed Resolution<sup>44</sup> dated February 10, 2006.

Hence, this petition raising the following issues:

- I. THE HONORABLE COURT OF APPEALS COMMITTED A GRIEVOUS ERROR WHEN IT RULED THAT A CORPORATION MAY ARBITRARILY TAKE THE LAW INTO THEIR OWN HANDS BY MEANS OF A MERE BOARD RESOLUTION.

---

<sup>37</sup> *Id.* at 151-152.

<sup>38</sup> *Id.* at 152.

<sup>39</sup> *Id.* at 153-154.

<sup>40</sup> Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring; *id.* at 159-165.

<sup>41</sup> *Rollo*, p. 165.

<sup>42</sup> *Id.* at 163.

<sup>43</sup> *Id.* at 164.

<sup>44</sup> Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Jose C. Mendoza and Arturo G. Tayag, concurring, *id.* at 51-57.

- II. THE HONORABLE COURT OF APPEALS COMMITTED A GRIEVOUS ERROR WHEN IT RULED THAT THE PETITIONER WAS NO LONGER IN POSSESSION OF THE UNIT SIMPLY BECAUSE THE PETITIONER WAS IN POSSESSION OF ANOTHER UNIT.<sup>45</sup>

We find no merit in the petition.

At the outset, a perusal of the records of Criminal Case No. 02-199574 in *People of the Philippines v. Benito Fernandez Go, et al.*, pending before the RTC where the Information for Robbery was filed, would show that on March 12, 2008, Presiding Judge Zenaida R. Daguna issued an Order<sup>46</sup> granting the Motion to Withdraw Information filed by ACP Armando C. Velasco. The withdrawal of the information was based on the alleged failure of petitioner to take action on the Amended Decision issued by the CA which, in effect, reversed and set aside the finding of probable cause, and in order for the case not to appear pending in the docket of the court. The propriety of the determination of probable cause is, however, the subject of this present petition. Besides, in allowing the withdrawal of the information, the RTC in fact did not make a determination of the existence of probable cause. Thus, the withdrawal of the information does not bar the Court from making a final determination of whether or not probable cause exists to warrant the filing of an Information for Robbery against respondents in order to *write finis* to the issue elevated before us.<sup>47</sup>

From the time the complaint was first lodged with the OCP, the latter, the Secretary of Justice and the CA had been in disagreement as to the existence or absence of probable cause sufficient to indict respondents of the offense charged. After a thorough review of the records of the case, we find

---

<sup>45</sup> *Rollo*, p. 38.

<sup>46</sup> RTC records, Vol. II, p. 000255.

<sup>47</sup> See *Torres, Jr. v. Aguinaldo*, G.R. No. 164268, June 28, 2005, 461 SCRA 599.

no reason to depart from the CA conclusion that the evidence presented was not sufficient to support a finding of probable cause.

Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondents are probably guilty thereof and should be held for trial.<sup>48</sup> There is no definitive standard by which probable cause is determined except to consider the attendant conditions.<sup>49</sup>

Respondents were charged with *robbery in an uninhabited place*, which was later amended to reflect the facts as alleged in the complaint that the robbery was committed in an inhabited place and that it was committed through force upon things.<sup>50</sup>

“Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, is guilty of robbery.”<sup>51</sup> To constitute robbery, the following elements must be established:

- (1) The subject is personal property belonging to another;
- (2) There is unlawful taking of that property;
- (3) The taking is with the intent to gain; and
- (4) There is violence against or intimidation of any person or use of force upon things.<sup>52</sup>

Admittedly, the subject 10<sup>th</sup> floor unit is owned by the corporation and served as the family residence prior to the death of petitioner and respondents’ parents. The 10<sup>th</sup> floor unit, including the personal properties inside, is the subject of estate proceedings pending in another court and is,

---

<sup>48</sup> *Metropolitan Bank and Trust Co. (Metrobank), represented by Rosella A. Santiago v. Antonino O. Tobias III*, G.R. No. 177780, January 25, 2012.

<sup>49</sup> *Id.*

<sup>50</sup> OCP records, p. 156.

<sup>51</sup> *Bernal v. Court of Appeals*, 247-A Phil. 92, 97 (1988).

<sup>52</sup> *De Guzman v. People*, G.R. No. 166502, October 17, 2008, 569 SCRA 452, 457.



therefore, involved in the disputed claims among the siblings (petitioner and respondents). Respondents admitted that armed with a Board Resolution authorizing them to break open the door lock system of said unit and to install a new door lock system, they went up to the subject unit to implement said resolution. The said corporate action was arrived at because petitioner had allegedly prevented prospective buyers from conducting ocular inspection.

Petitioner, however, claims that on December 16, 1999 and sometime in January 2000, respondents brought out from the unit 34 boxes containing her personal belongings worth more than ₱10 million. We cannot, however, fathom why petitioner did not immediately report the first incident and waited for yet another incident after more or less one month. If the value involved is what she claims to be, it is contrary to human nature to just keep silent and not immediately protect her right. Her general statement that she was intimidated by Benito who was known to be capable of inflicting bodily harm cannot excuse her inaction. Petitioner, therefore, failed to establish that there was unlawful taking.

Assuming that respondents indeed took said boxes containing personal belongings, said properties were taken under claim of ownership which negates the element of intent to gain.

x x x *Animus lucrandi* or intent to gain is an internal act which can be established through the overt acts of the offender. The unlawful taking of another's property gives rise to the presumption that the act was committed with intent to gain. This presumption holds unless special circumstances reveal a different intent on the part of the perpetrator x x x.<sup>53</sup>

Taking as an element of robbery means depriving the offended party of ownership of the thing taken with the character of permanency. The

---

<sup>53</sup>*Id.* at 457.

taking should not be under a claim of ownership. Thus, one who takes the property openly and avowedly under claim of title offered in good faith is not guilty of robbery even though the claim of ownership is untenable.<sup>54</sup> The intent to gain cannot be established by direct evidence being an internal act. It must, therefore, be deduced from the circumstances surrounding the commission of the offense.<sup>55</sup>

In this case, it was shown that respondents believed in good faith that they and the corporation own not only the subject unit but also the properties found inside. If at all, they took them openly and avowedly under that claim of ownership.<sup>56</sup> This is bolstered by the fact that at the time of the alleged incident, petitioner had been staying in another unit because the electric service in the 10<sup>th</sup> floor was disconnected. We quote with approval the CA conclusion in their Amended Decision, thus:

Indeed, on second look, We note that what is involved here is a dispute between and among members of a family corporation, the Fortune Wealth Mansion Corporation. [Petitioner] Lily Sy and [respondents] Merry, Jennifer, and Glenn, all surnamed Sy, are the owners-incorporators of said corporation, which owns and manages the Fortune Wealth Mansion where [petitioner] allegedly resided and where the crime of robbery was allegedly committed. As part-owners of the entire building and of the articles allegedly stolen from the 10<sup>th</sup> floor of said building ... the very same properties that are involved between the same parties in a pending estate proceeding, the [respondents] cannot, as co-owners, be therefore charged with robbery. The fact of co-ownership negates any intention to gain, as they cannot steal properties which they claim to own.

Hence, even if we are to assume that private respondents took the said personal properties from the 10<sup>th</sup> floor of the Fortune Wealth Mansion, they cannot be charged with robbery because again, the taking was made under a claim of ownership x x x<sup>57</sup>

Respondents should not be held liable for the alleged unlawful act absent a felonious intent. “*Actus non facit reum, nisi mens sit rea*. A crime is

---

<sup>54</sup> *Bernal v. Court of Appeals*, *supra* note 51; *United States v. Manluco*, 28 Phil. 360, 361 (1914).

<sup>55</sup> *Bernal v. Court of Appeals*, *supra* note 51, at 98.

<sup>56</sup> *United States v. Manluco*, *supra* note 51, 361.


<sup>57</sup> *Rollo*, pp. 162-163.

not committed if the mind of the person performing the act complained of is innocent.”<sup>58</sup>


The Court adheres to the view that a preliminary investigation serves not only the purposes of the State, but more importantly, it is a significant part of freedom and fair play which every individual is entitled to. It is thus the duty of the prosecutor or the judge, as the case may be, to relieve the accused of going through a trial once it is determined that there is no sufficient evidence to sustain a finding of probable cause to form a sufficient belief that the accused has committed a crime. In this case, absent sufficient evidence to establish probable cause for the prosecution of respondents for the crime of robbery, the filing of information against respondents constitute grave abuse of discretion.<sup>59</sup>


**WHEREFORE,** premises considered, the petition is hereby **DENIED** for lack of merit.

**SO ORDERED.**


  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

  
**ARTURO D. BRION**  
Associate Justice

  
**ROBERTO A. ABAD**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

<sup>58</sup> *De Guzman v. People*, *supra* note 52, at 458.

<sup>59</sup> *Yupangco Cotton Mills, Inc. v. Mendoza*, 494 Phil. 391, 416 (2005).

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**

Chief Justice