



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MASAYUKI HASEGAWA,
Petitioner,

G.R. No. 184536

Present:

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

VERSUS-

LEILA F. GIRON,
Respondent.

Promulgated.

AUG 14 2013

DECISION

PEREZ, J.:

This petition for review on *certiorari* seeks to nullify the Decision¹ dated 30 June 2008 and Resolution² dated 18 September 2008 of the Court of Appeals in CA-G.R. SP No. 100091. The appellate court reversed and set aside the Resolutions of the Department of Justice (DOJ), which dismissed respondent Leila F. Giron's complaint for kidnapping and serious illegal detention against petitioner Masayuki Hasegawa.

On 16 September 2006, respondent filed a Complaint-Affidavit for Kidnapping and Serious Illegal Detention against petitioner and several John Does. Respondent alleged that sometime on December 2005, she and her officemate, Leonarda Marcos (Marcos) filed a complaint against their

employer Pacific Consultants International, J.F. Cancio & Associates, Jaime F. Cancio, Tesa Tagalo and petitioner for illegal salary deductions, non-payment of 13th month pay, and non-remittance of SSS contributions. Respondent averred that since the filing of said complaint, they have been subjected to threats and verbal abuse by petitioner to pressure them to withdraw the complaint. Respondent had also filed separate complaints for grave threats, grave coercion, slander and unjust vexation against petitioner. Said cases are pending before the Metropolitan Trial Court (MeTC) of Pasay City.

Respondent recalled that on 17 July 2006, she received a call from an alleged messenger of her counsel who requested for a meeting at Harrison Plaza Mall in Manila. She asked Marcos to accompany her. While respondent and Marcos were on their way to Harrison Plaza Mall, they noticed a black Pajero car parked in front of the Package B Building inside the Light Rail Transit Authority (LRTA) compound, the place where both of them work. When they reached the mall, they went inside the SM Department Store to buy a few things. They then noticed two men following them. Respondent immediately called a close friend and reported the incident. Thereafter, respondent and Marcos went out of the department store and stood near the food stalls to make another phone call. Respondent suddenly felt a man's gun being pushed against the right side of her body. She panicked and her mind went blank. Respondent and Marcos were taken at gunpoint and pushed inside a black Pajero.³

While inside the vehicle, they were blindfolded and gagged. They were taunted and repeatedly threatened by their abductors into withdrawing the case against petitioner. When her blindfold was loosened, respondent was able to take a good look at her surroundings. She noticed that the car was parked in a warehouse with concrete walls and high roof. She also saw four vehicles parked outside. She finally saw three men wearing bonnets over their faces: the first one, seated beside her; the second one, seated in front; and the third one, was standing near the parked vehicles.⁴

Before respondent and Marcos were released, they were once again threatened by a man who said: "*pag tinuloy nyo pa kaso kay Hasegawa, may paglalagyan na kayo, walang magsusumbong sa pulis, pag nalaman namin na lumapit kayo, babalikan namin kayo.*" They were released at around

³ Id. at 160-161.

⁴ Id. at 162.

11:00 p.m. on 18 July 2006 and dropped off in Susana Heights in Muntinlupa.⁵

In a separate Affidavit, Marcos corroborated respondent's account of the alleged kidnapping. Marcos added that while she was in captivity, her blindfold was loosened and she was able to see petitioner inside one of the vehicles parked nearby, talking to one of their abductors, whom she noticed to be wearing bonnets.⁶

Petitioner, in his Counter-Affidavit, denied the accusation of kidnapping and serious illegal detention against him. Petitioner categorically stated that he had nothing to do with the kidnapping; that he was neither the "brains" nor a "participant" in the alleged crimes; that he did not know the alleged kidnappers; and, that he was not present inside one of the vehicles talking with one of the abductors at the place alleged by Marcos.⁷

Petitioner also pointed out several supposed inconsistencies and improbabilities in the complaint, such as:

1. Respondent and Marcos claim that petitioner has continuously warned them about withdrawing the complaint since its filing on December 2005 but petitioner only came to know about the complaint on 8 May 2006;
2. After being set free by their alleged abductors, respondent and Marcos did not immediately report the matter to the police either in Manila or Muntinlupa;
3. It is strange that respondent and Marcos did not know who their lawyer's messenger is and did not find it unusual that their lawyer would call for a meeting in Harrison Plaza Mall instead of at his office;
4. Petitioner wondered how respondent and Marcos could remember and distinguish the alleged black Pajero used by their captors to be the

⁵ Id.

⁶ Id. at 432-435.

⁷ Id. at 174.

same black Pajero they saw in the parking lot of LRTA Package B Building;

5. It is incredible that the two alleged abductors were able to enter SM Department Store with guns in their possession;
6. It is an act contrary to human nature that upon noticing two men following them, respondent and Marcos went outside the department store to make a phone call, instead of staying inside the department store;
7. Marcos never mentioned that respondent's mobile phone was ringing while they were inside the vehicle;
8. The alleged statements made by the kidnappers demanding withdrawal of complaint against petitioner are hearsay;
9. It is unimaginable that petitioner was supposedly allowed to text and Marcos was allowed to call someone on her mobile phone;
10. It was very convenient for Marcos to mention that she saw petitioner inside one of the vehicles talking to one of the abductors. If indeed petitioner is involved in the kidnapping, he would never allow his identity to be exposed;
11. Respondent and Marcos did not report to the Philippine National Police what had happened to them. Only respondent wrote a letter to the National Bureau of Investigation (NBI), two weeks later, detailing her ordeal. And only respondent filed the instant case two months later; and
12. Respondent and Marcos continued to work after their alleged kidnapping.⁸

Petitioner asserted that respondent and Marcos are extorting money from him because the instant case was filed right after the negotiations to settle the civil aspect of the three cases they filed with the Bureau of

⁸ Id. at 175-183.

Immigration and Deportation (BID), National Labor Relations Commission (NLRC) and MeTC Pasay failed.⁹

Petitioner's personal driver, Edamar Valentino, corroborated petitioner's statement that on 17 and 18 July 2006, he drove petitioner at 7:30 a.m. and brought him home after work as was his usual schedule.¹⁰

In a Resolution¹¹ dated 5 January 2007, Senior State Prosecutor Emilie Fe M. De Los Santos dismissed the complaint for lack of probable cause.

Respondent filed an appeal from the Resolution of the prosecutor dismissing her complaint. In her Petition for Review before the DOJ, respondent claimed that the Investigating Prosecutor gravely erred when she recommended the dismissal of the case against petitioner despite overwhelming evidence showing the existence of probable cause. She thus prayed for the reversal of the Resolution of the Investigating Prosecutor.

Finding no basis to overturn the findings of the Investigating Prosecutor, then Secretary of Justice Raul M. Gonzales dismissed the petition on 11 April 2007.

Respondent's motion for reconsideration having been denied by the DOJ, she filed a petition for *certiorari* before the Court of Appeals. On 30 June 2008, the Court of Appeals granted the petition, reversed and set aside the Resolutions of the DOJ and ordered the filing of an Information for Kidnapping and Serious Illegal Detention against petitioner. The Court of Appeals found that "the Secretary [of Justice] arrogated upon himself the functions of the judge by demanding more than a sampling, but for pieces of evidence that were understandably not there yet, being suited to a trial proper."¹² The appellate court went on to state that the prosecutor usurped the duties belonging to the court when she "overstretched her duties and applied the standards, not of ordinary prudence and cautiousness, nor of mere 'reasonable belief' and probability, but of a full-blown trial on the merits, where rules on admissibility of testimonies and other evidence strictly apply."¹³

⁹ Id. at 46.

¹⁰ Id. at 48

¹¹ Id. at 228-241.

¹² Id. at 30.

¹³ Id. at 30-31.

The motion for reconsideration of the petitioner was denied by the Court of Appeals in its Resolution¹⁴ dated 18 September 2008. Hence, the instant petition attributing the following errors to the Court of Appeals, to wit:

I.

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN REVERSING THE FINDING OF THE SECRETARY OF JUSTICE THAT NO PROBABLE CAUSE EXISTS IN THE INSTANT CASE.

II.

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN GRANTING RESPONDENT'S PETITION FOR *CERTIORARI* DESPITE RAISING QUESTIONS OF FACT AND BEING UNMERITORIOUS.

III.

THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN RULING THAT RESPONDENT'S PETITION FOR *CERTIORARI* IS THE PROPER MODE OF APPEAL FROM JUDGMENTS OF THE SECRETARY OF JUSTICE.¹⁵

Petitioner insists that there was no showing that the Secretary of Justice acted with grave abuse of discretion in ruling that no probable cause exists to indict him for the crimes charged. Petitioner asserts that the Secretary of Justice clearly and sufficiently explained the reasons why no probable cause exists in this case. Petitioner faults the appellate court for also having done what it has charged the Secretary of Justice of doing, *i.e.*, deliberating point by point the issues and arguments raised by the parties in its Decision. Petitioner also faults the appellate court for overlooking the fact that the kidnapping and serious illegal detention charges are but the fourth in a series of successive cases filed by respondent against petitioner, all of which were dismissed by the BID, NLRC and MeTC of Pasay City. Petitioner argues that a review of facts and evidence made by the appellate court is not the province of the extraordinary remedy of certiorari. Finally, petitioner contends that the appellate court should have dismissed outright respondent's petition for *certiorari* for failure to exhaust administrative remedies and for being the wrong mode of appeal.

We had initially denied this petition, but upon motion for reconsideration of the petitioner, we decided to reconsider said denial and to give it due course.¹⁶

¹⁴ Id. at 36.

¹⁵ Id. at 58.

¹⁶ Id. at 680.

Directed to file her Comment, respondent counters that in preliminary investigation cases, such as that done in this case, there is, as yet no occasion for the parties to display their full and exhaustive evidence, as a mere finding that the kidnapping might have been committed by petitioner is already sufficient.

The elementary rule is that the Court of Appeals has jurisdiction to review the resolution issued by the DOJ through a petition for *certiorari* under Rule 65 of the Rules of Court on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.¹⁷

The grant by the Court of Appeals of the *certiorari* petition is a determination that the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal complaint for kidnapping and serious illegal detention for lack of probable cause.

The decision whether or not to dismiss the criminal complaint against the accused depends on the sound discretion of the prosecutor. Courts will not interfere with the conduct of preliminary investigations, or reinvestigations, or in the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender. Courts are not empowered to substitute their own judgment for that of the executive branch. Differently stated, as the matter of whether to prosecute or not is purely discretionary on his part, courts cannot compel a public prosecutor to file the corresponding information, upon a complaint, where he finds the evidence before him insufficient to warrant the filing of an action in court. In sum, the prosecutor's findings on the existence of probable cause are not subject to review by the courts, unless these are patently shown to have been made with grave abuse of discretion.¹⁸ We find such reason for judicial review here present. We sustain the appellate court's reversal of the ruling of the Secretary of the DOJ.

Probable cause has been defined as the existence of such facts and circumstances as would excite the 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. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and

¹⁷ *Chong v. Dela Cruz*, G.R. No. 184948, 21 July 2009, 593 SCRA 311, 314-315.

¹⁸ *Baviera v. Prosecutor Paglinawan*, 544 Phil. 107, 120-121 (2007).

prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean “actual or positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.¹⁹

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.²⁰

It must be mentioned, though, that in order to arrive at probable cause, the elements of the crime charged should be present.²¹

The elements of kidnapping and serious illegal detention under Article 267 of the Revised Penal Code are:

1. the offender is a private individual;
2. he kidnaps or detains another or in any other manner deprives the latter of his liberty;
3. the act of detention or kidnapping is illegal; and
4. in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.

¹⁹ *Metropolitan Bank & Trust Company v. Gonzales*, G.R. No. 180165, 7 April 2009, 584 SCRA 631, 640-641 citing *Yu v. Sandiganbayan*, 410 Phil. 619, 627 (2001).

²⁰ *Fenequito v. Vergara, Jr.*, G.R. No. 172829, 18 July 2012, 677 SCRA 113, 120-121 citing *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, 30 July 2008, 560 SCRA 518, 534-535.

²¹ *Sy Tiong Shiou v. Sy Chim*, G.R. No. 174168, 30 March 2009, 582 SCRA 517, 530.

All elements were sufficiently averred in the complaint-affidavit were sufficient to engender a well-founded belief that a crime may have been committed and petitioner may have committed it. Respondent, an office worker, claimed that she and her friend were taken at gunpoint by two men and forcibly boarded into a vehicle. They were detained for more than 24-hours. Whether or not the accusations would result in a conviction is another matter. It is enough, for purposes of the preliminary investigation that the acts complained of constitute the crime of kidnapping and serious illegal detention.

The findings of the Investigating Prosecutor rest on lack of *prima facie* evidence against petitioner. That the kidnapping and serious illegal detention charge is a mere fabrication was based on the Investigating Prosecutor's observations, as follows: First, no law enforcement agency has investigated the complaint and indorsed the same to the prosecution office for preliminary investigation as is the usual procedure for grave offenses. Second, the other victim, Marcos, did not file a case against petitioner. Third, respondent continued to report to work at the LRTA compound where the supposed mastermind also works. Fourth, there was the unexplained absence of report of the alleged incident to any police or law enforcement agencies which taints the trustworthiness of respondent's allegations. Fifth, respondents' theory on the motive for her kidnapping has been shown to be fallacious. Sixth, respondent's propensity to file a string of cases against petitioner supports the contention that all these are part of her corrupt scheme to extort money from petitioner. And seventh, vital witnesses for the respondent such as the NBI agent assigned to her complaint and her other officemates who could have corroborated her story were not presented.

The Investigating Prosecutor has set the parameters of probable cause too high. Her findings dealt mostly with what respondent had done or failed to do after the alleged crime was committed. She delved into evidentiary matters that could only be passed upon in a full-blown trial where testimonies and documents could be fairly evaluated in accordance with the rules of evidence. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.²² By taking into consideration the defenses raised by

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Clay & Feather International, Inc. v. Lichaytoo, G.R. No. 193105, 30 May 2011, 649 SCRA 516, 525-526 citing *Andres v. Justice Secretary Cuevas*, 499 Phil. 36, 49-50 (2005) and *Quiambao v. Hon. Desierto*, 481 Phil. 852, 866 (2004).

petitioner, the Investigating Prosecutor already went into the strict merits of the case. As aptly stated by the appellate court:

That the NBI or other prosecutor agencies of the government neglected to act on the petitioner's complaint can hardly constitute evidence that the incident did not in fact happen, or was merely fabricated or invented to extort money from the private respondent. Instead of faulting the complainants and questioning their motivations, the strong arm of the State might be better off investigating non-feasance in public office.

In any event, the perceived inconsistencies are more imaginary than real, delving as it does on minor, ambiguous and inconsequential matters that may yet be properly addressed in a full-dress court hearing. We thus agree with the petitioner's assertion on the lack of any legal or factual basis for the public respondent's refusal to apply the rule that a positive declaration is superior to a negative averment. It is well to recall that the nullity of a resolution may be shown not only by what patently appears on its face, but also by the documentary and the testimonial evidence found in the records of the case, upon which such ruling is based.

True, discretion lies with the investigator to believe more the respondent's alibi, or to shoot down the credibility of the complainant as well as the testimony of her witnesses. Still, she may not, as here, turn a blind eye to evidence upon formidable evidence mounting to show the acts complained of. Such cavalier disregard of the complainants' documents and attestations may otherwise be the "arbitrary, whimsical and capricious" emotion described in the term, "grave abuse[.]"

It may not even matter that the respondent presented his own counter-arguments in avoidance of the complaints, assuming he also did so adeptly, convincingly; far crucial is discerning that the task transcended mere discovery of the likelihood or the "probability" that a crime was committed, but ventured into weighing evidence beyond any reasonable doubt. Indeed, the respondent Secretary arrogated upon himself the functions of the judge by demanding more than a sampling, but for pieces of evidence that were understandably not there yet, being suited to a trial proper.²³

Thus, did the Court of Appeals detail why the holding that there is no probable cause to indict petitioner amounted to grave abuse of discretion on the part of the DOJ. Resort by respondent to the extraordinary writ of *certiorari* and the grant thereof by the Court of Appeals is correct.

²³*Rollo*, pp. 29-30.

WHEREFORE, premises considered, the instant Petition is **DENIED** for lack of merit. The 30 June 2008 Decision and the 18 September 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100091, are hereby **AFFIRMED**.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

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.

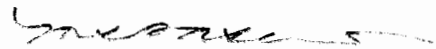
**ANTONIO T. CARPIO**

Associate Justice

Second Division, Chairperson

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