

SECOND DIVISION

[G.R. No. 201310, January 11, 2016]

**MARK REYNALD MARASIGAN Y DE GUZMAN, PETITIONER, VS.
REGINALD FUENTES ALIAS "REGIE," ROBERT CALILAN ALIAS
"BOBBY," AND ALAIN DELON LINDO, RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

This resolves a Petition^[1] for Review on Certiorari under Rule 45 of the Rules of Court praying that (1) the August 19, 2011 Decision^[2] and the February 21, 2012 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 113116 be reversed and set aside and (2) the September 2, 2009 Resolution^[4] rendered by then Department of Justice Undersecretary Linda L. Malenab-Hornilla (Undersecretary Malenab-Hornilla) be reinstated.^[5]

The assailed August 19, 2011 Decision of the Court of Appeals dismissed the Petition for Certiorari under Rule 65 of the Rules of Court filed by petitioner Mark Reynald Marasigan (Marasigan) and affirmed the February 8, 2010 Resolution^[6] of then Department of Justice Secretary Agnes VST Devanadera (Secretary Devanadera).^[7] The assailed February 21, 2012 Resolution of the Court of Appeals denied Marasigan's Motion for Reconsideration.^[8]

The February 8, 2010 Resolution of Secretary Agnes VST Devanadera reversed and set aside Undersecretary Linda L. Malenab-Hornilla's September 2, 2009 Resolution and dismissed the criminal complaints against respondents Reginald Fuentes (Fuentes) and Alain Delon Lindo (Lindo) and found probable cause to charge respondent Robert Calilan (Calilan) with only less serious physical injuries.^[9] Undersecretary Malenab-Hornilla's September 2, 2009 Resolution partially granted Marasigan's Petition for Review and directed the filing of informations for attempted murder against Fuentes, Calilan, and Lindo.^[10]

Per Marasigan's allegations, on December 20, 2006 at about 3:00 a.m., while he was walking on his way home along Hebrew Street, Adelina I Subdivision, Barangay San Antonio, San Pedro, Laguna, and after he had passed by Fuentes' house where some merrymaking had been ongoing, Marasigan felt someone throw an object at him from behind. Turning around, he saw Fuentes, who, upon noticing that he had been seen, disappeared. A witness, Jefferson Pablo (Pablo), spoke with Marasigan and confirmed that it was Fuentes who threw an object at him.^[11]

While he and Pablo were speaking, Fuentes reappeared with Calilan and Lindo, as well as with another unidentified individual. Fuentes suddenly punched Marasigan on the face, making his nose bleed. Calilan and Lindo also hit him while their

unidentified companion sought to stop them. Fuentes picked up a stone (i.e., piece of a hollow block) and attempted to hit Marasigan's head with it. Marasigan parried the stone with his hand, causing his hand to fracture. Fuentes again picked up the stone. Lindo and Calilan took hold of each of Marasigan's arms. Several more men who were in Fuentes' home joined in the assault.^[12]

Sensing that Fuentes, Calilan, and Lindo were determined to crush him with hollow blocks from a nearby construction site, Marasigan shouted for help. Gregoria Pablo, Jefferson Pablo's mother, came rushing out of their house and tried to pacify Fuentes, Calilan, and Lindo. They, however, continued to assault Marasigan. It was only upon the arrival of neighbors Marcelo Maaba and Lauro Agulto that Fuentes, Calilan, and Lindo ceased their assault and fled.^[13]

Assisted by his parents, Marasigan submitted himself to two (2) medico-legal examinations, and an x-ray examination. He also filed reports/complaints in the barangay hall and police station. On December 28, 2006, he formally filed a criminal complaint for frustrated murder against Fuentes, Calilan, Lindo, and one John Doe before Assistant Provincial Prosecutor Milaflor Tan Mancia.^[14]

After conducting preliminary investigation, Assistant Provincial Prosecutor Christopher R. Serrano (Assistant Provincial Prosecutor Serrano) issued the Resolution^[15] dated August 16, 2007 finding probable cause for charging Fuentes and Calilan with less serious physical injuries and clearing Lindo of any liability.^[16] He reasoned that there were no qualifying circumstances to support a charge for murder. He added that the injuries suffered by Marasigan, including his fractured finger, required a healing period of not more than 30 days.^[17]

Aggrieved, Marasigan filed a Petition for Review before the Department of Justice. He argued that the medical findings made on him as well as the qualifying circumstance of abuse of superior strength justified prosecution for frustrated murder. He added that Lindo's acts were unambiguous and indicated his participation in a design to kill him.^[18]

In the Resolution dated September 2, 2009, Undersecretary Malenab-Hornilla partially granted Marasigan's Petition for Review and ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo. Undersecretary Malenab-Hornilla faulted Assistant Provincial Prosecutor Serrano for relying on the medico-legal findings to the exclusion of other evidence. She reasoned that Fuentes, Calilan, and Lindo's acts, as recounted by the witnesses Gregoria Pablo, Marcelo Maaba, and Lauro Agulto, indicated a design to kill Marasigan, which was only stymied by these witnesses' arrival.^[19] She added, however, that precisely because of the arrival of these witnesses, Fuentes, Calilan, and Lindo failed to complete "all the punching, kicking and stoning needed to kill [Marasigan]."^[20] Thus, they could not be charged with frustrated murder, but only with attempted murder.^[21]

Fuentes, Calilan, and Lindo filed their Motion for Reconsideration to Undersecretary Malenab-Hornilla's Resolution.^[22]

While the Motion for Reconsideration of Fuentes, Calilan, and Lindo was pending, the

Provincial Prosecutor's Office filed the Information^[23] for attempted murder before Branch 93, Regional Trial Court, San Pedro, Laguna.

On February 8, 2010, Secretary Devanadera issued a Resolution on Fuentes, Calilan, and Lindo's Motion for Reconsideration. This Resolution absolved Fuentes and Lindo of liability and deemed that Calilan could only be charged with less serious physical injuries. Secretary Devanadera cited with approval Assistant Provincial Prosecutor Serrano's statement in his own Resolution that there was no sufficient showing, or "clear and convincing evidence to prove that the herein respondents collectively intended to kill [Marasigan]."^[24]

Aggrieved, Marasigan filed a Petition for Certiorari under Rule 65 of the Rules of Court before the Court of Appeals.^[25]

In its assailed August 19, 2011 Decision, the Court of Appeals dismissed Marasigan's Petition for Certiorari. In its assailed February 21, 2012 Resolution, the Court of Appeals denied Marasigan's Motion for Reconsideration.

Hence, this Petition was filed.

For resolution is the sole issue of the proper crime, if any, for which any or all of the respondents must stand trial.

I

Petitioner comes to us via a Petition for Review on Certiorari under Rule 45 of the Rules of Court following the denial by the court of appeals of his Petition for Certiorari under Rule 65, the errors which are properly correctible by each remedy are settled:

In a petition for certiorari, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions or issues beyond its competence such as errors of judgment. Errors of judgment of the trial court are to be resolved by the appellate court in the appeal by and of error or via a petition for review on certiorari in this Court under Rule 45 of the Rules of Court. Certiorari will issue only to correct errors of jurisdiction. It is not a remedy to correct errors of judgment. An error of judgment is one in which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. Error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court.^[26]

The present, Rule 45 Petition calls upon us to examine whether the Court of Appeals committed an error of judgment in resolving the question of whether Secretary Devanadera committed grave abuse of discretion, amounting to lack or excess of jurisdiction in concluding the respondents ought to stand trial only for the charge of less serious physical injuries. In her capacity as Secretary of Justice, Secretary Devanadera was well within her jurisdiction to rule on the Petition for Review filed with the Department of Justice. She is, however, not at liberty to flagrantly disregard the evidence and the records and to insist on conclusions that stray dismally far from what the evidence warrants. Neither is she at liberty to disregard evidentiary principles established in jurisprudence.

It is basic that petitions for review on certiorari under Rule 45 may only raise pure questions of law^[27] and that findings of fact are generally binding and conclusive on this court. Nevertheless, there are recognized exceptions that will allow this court to overturn the factual findings confronting it. These exceptions are the following:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
- (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.^[28]

Moreover, in Rule 45 petitions, which are appeals from petitions for certiorari under Rule 65, the appealed ruling may be reversed and its factual moorings rejected if it can be shown that, in rendering the act originally subject of the Rule 65 petition, "the tribunal acted capriciously and whimsically or in total disregard of evidence material to the controversy[.]"^[29]

A careful review of this case and of the evidence that were available for the prosecutors' and the Department of Justice's appreciation will reveal that there was a gross misapprehension of facts on the part of Assistant Provincial Prosecutor Serrano and Secretary Devanadera. It was, therefore, grave abuse of discretion for Secretary Devanadera to conclude that respondent Calilan may only be prosecuted for the crime of less serious physical injuries while his co-respondents, Fuentes and Lindo, may not be prosecuted at all.

II

Secretary Devanadera was in grave error in citing with approval Assistant Provincial Prosecutor Serrano's having faulted petitioner for lack of "sufficient s[h]owing, [o]r **clear and convincing evidence** to prove that the herein respondents collectively intended to kill [petitioner]."^[30]

Assistant Provincial Prosecutor Serrano's Resolution was issued pursuant to a preliminary investigation. Preliminary investigation "ascertains whether the offender should be held for trial or be released."^[31] It inquires only into the existence of probable cause: a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on "clear and convincing evidence":

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. 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.

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.^[32] (Emphasis supplied, citations omitted)

III

Secretary Devanadera is of the conclusion that "[t]he evidence is equivocal on whether respondents had any homicidal intent in engaging in a scuffle with the complainant."^[33] In so doing, she makes much of how "[t]he physical evidence