

SECOND DIVISION

[G.R. Nos. 148213-17, March 13, 2009]

DUARDO E. KAPUNAN, JR., PETITIONER, VS. THE COURT OF APPEALS, THE SECRETARY OF THE DEPARTMENT OF JUSTICE, FELICIANA OLALIA, EROLINA ALAY-AY, AND THE PRESIDING JUDGE OF BRANCH 71, REGIONAL TRIAL COURT OF ANTIPOLLO CITY, RESPONDENTS.

[G.R. NO. 148243]

OSCAR E. LEGASPI, PETITIONER, VS. SERAFIN R. CUEVAS, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE, FELICIANA C. OLALIA, PEROLINA ALAY-AY AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

TINGA, J.:

Petitioners face criminal charges in connection with the 1986 killing of Kilusang Mayo Uno (KMU) Chairman Rolando Olalia and his driver, Leonor Alay-ay. These consolidated petitions ask us to consider whether petitioners are immune from prosecution for the Alay-ay/Olalia slayings by reason of a general grant of amnesty issued by President Fidel V. Ramos to rebels, insurgents and other persons who had committed crimes in furtherance of political ends. The Court of Appeals, in its Joint Decision^[1] dated 29 December 1999, as well as in its Resolution^[2] dated 22 May 2001, had held that they had not.

I.

Olalia and Alay-ay were both found dead with their bodies riddled with bullets on 13 November 1986. The double murders stirred considerable public anger, given Olalia's high profile as Chairman of the KMU at the time of his death.

On 12 January 1998, private respondents Feliciano C. Olalia and Perolina G. Alay-ay filed a letter-complaint before the Department of Justice (DOJ) charging petitioner Eduardo E. Kapunan, Jr. (Kapunan, Jr.), petitioner Oscar E. Legaspi (Legaspi), and other officers and men of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) for the complex crime of kidnapping with murder of Alay-ay and Olalia. The affidavits of TSgt. Medardo Barreto (Barreto) and Eduardo E. Bueno were annexed to the complaint, which was docketed as I.S. No. 98-025.

Then Secretary of Justice Serafin R. Cuevas created a panel of investigators^[3] (Panel) who were tasked to conduct the preliminary investigation on the complaint. Bueno and especially Barreto provided the crux of the factual allegations against petitioners.

On 26 February 1998, Kapunan, Jr., filed a motion to dismiss^[4] the charges against him before the Panel. On the same day, Legaspi likewise filed a motion to dismiss^[5] alleging that his criminal liability had been totally extinguished by the amnesty granted to him under Proclamation No. 347, entitled "Granting Amnesty to Rebels, Insurgents, and All Other Persons Who Have or May Have Committed Crimes Against Public Order, Other Crimes Committed in Furtherance of Political Ends, and Violations of the Article of War, and Creating a National Amnesty Commission."^[6] The DOJ Prosecutor refused to rule on the motions to dismiss and instead treated them as their counter-affidavits.

In a Resolution^[7] dated 18 March 1998, the Panel recommended the filing of two informations each for a separate count of murder against Kapunan, Jr., Legaspi, Ricardo Dicon, Cirilio Almario, Filomeno Crizaldo Maligaya, Edger Sumido, Jose Bacera, Jr., Dennis Jabatan, Freddie Sumagaysay, Fernando Casanova, Gene Paris, Gilberto Galicia, and Desiderio Perez. The Panel determined that Olalia and Alay-ay were seized on the night of 12 November 1986 along Julia Vargas Avenue in Pasig.^[8] Thereafter, the two were brought to a "safehouse" in Cubao, then to a secluded area in Antipolo where they were shot dead. The alleged perpetrators belonged to a team of members of the AFP.

The Panel rendered the following findings on the involvement of Kapunan, Jr., and Legaspi in the Olalia/Alay-ay slayings, thus:

Respondent Eduardo E. Kapunan, Jr. is alleged to have created the Counter-Intelligence and special project team. He later ordered the transfer of the agents of SOG-OMND to the Operation Control (OPCON) headed by respondent Ricardo Dicon. On that occasion, he ordered Barreto and Sabalza to help Sumido in his surveillance mission on Rolando Olalia. When a news item came about the [sic] Lancer with Plate No. BBB-678, used in the abduction of Olalia and Alay-ay, he called Barreto and Sabalza and [discussed] the matter. He ordered the two (2) to clean-up the mess. Upon the suggestion of Barreto and Sabalza to change the paint of all the vehicles involved, he instructed the Finance Officer, Evelyn Estocapio to extend the needed financial support. Subsequently, in the [sic] small gathering in his office, he admonished the agents involved in [the] Olalia-Alay-ay operation to keep everything secret. In his defense, he denies his presence at the safehouse. Likewise, he claims Barreto did not point to him as the one who gave the orders to respondent Dicon. Similarly, he cannot be considered among those superiors (*itaas*) of the group because Barreto, Sabalza and Sumido were no longer under him. Also, he claims as grantee of Amnesty pursuant to Proclamation No. 347, it [sic] extinguished his criminal liability.

We find the denial insufficient to prevail over the positive and clear assertions of the witness about his participation (*People v. Pasillao*, 215 SCRA 163). The specific acts committed by him before, during and after the Olalia-Alay-ay SOG-OMND operation as pointed out by Barreto are [sic] clear indication of his concurrence to the said operation in pursuance of a common unlawful objective. Hence, it is inescapable for us to conclude that he is a co-conspirator in the offense charged.

Respondent Oscar Legaspi, per allegations of Barreto, was present at the safehouse when Sumido announced the arrival of Olalia and Alay-ay upon

their abduction. He went to the living room and peered over them up to the moment they were brought upstairs by Matammu [*sic*]. Months later, when the Olalia-Alay-ay murder case was hotly pursued by the authorities for investigation, he planned the sending abroad of the SOG agents suspected of being involved in the killing, and gave respondent Almario P80,000.00 to send Sabalza abroad. In his defense, he did not controvert these points. Instead, he claims that the offense charged is absorbed in the crime of rebellion. He being a grantee of amnesty pursuant to Proclamation No. 347, his criminal liability is extinguished. Thus, his presence at the safehouse, and the giving of the P80,000.00 to Almario to send Sabalza abroad, are impliedly admitted by him [*sic*]. Such act, although apparently appearing as independent acts from the commission of the offense, are however, suggestive of concurrence of will in pursuance of the common unlawful objective. Accordingly, probable cause against him exists as co-conspirator in the commission of the offense.^[9]

The Panel refused to consider petitioners' defense of amnesty on the ground that documents pertaining to the amnesty failed to show that the Olalia-Alay-ay murder case was one of the crimes for which the amnesty was applied for. Moreover, the Panel pointed out that the criminal liability of therein respondents (herein petitioners) was not obliterated by the amnesty granted to them. It was held that the killings were not committed in furtherance of a political belief because at that time, there was no rebellion yet launched against the Cory Aquino government. The rebellion mounted by the Reform the Armed Forces Movement (RAM) against the government was made long after the killing.^[10]

On 23 April^[11] and 9 May 1998^[12] respectively, Kapunan, Jr., and Legaspi appealed the said Resolution to the Secretary of Justice. Pending appeal of the case, the Panel filed criminal informations before the Regional Trial Court (RTC) of Antipolo, Branch 71, docketed as Criminal Cases Nos. 98-14881^[13] and 98-14882.^[14]

In a letter-resolution^[15] dated 28 July 1998, the Secretary of Justice dismissed their appeal, citing the inapplicability of the two proclamations invoked by petitioners. The Secretary ruled thus:

We are in accord with the findings of the Investigating Panel that in this particular case, the grant of amnesty to the respondents concerned, does not extinguish their criminal liability for the Olalia-Alay-ay killings. There is no showing that this case was one of those crimes for which amnesty was applied for and subsequently granted. Logic and reason dictate that amnesty for a particular offense could not have been granted when it was not even applied for. Besides, Proclamation No. 348 (granting amnesty to certain AFP/PNP personnel who may have committed certain acts defined herein) dated March 25, 1994, as amended by Proclamation No. 348 dated May 10, 1994, provides that for amnesty to be granted, the acts or omissions for which it is sought do not constitute serious human rights violations, such as acts of torture, **extra-legal execution**, arson, massacre, rape, other crimes against chastity, or robbery of any form (underscoring supplied). Evidently, the Olalia-Alay-ay murder partakes of the nature of extra-legal execution and could not have come within the

ambit of the law.

Section 2(a) of Proc. No. 347 provides that amnesty under such Proclamation shall extinguish any criminal liability for acts committed in pursuit of a political belief. However, considering the circumstances and factual backdrop of the instant case, it cannot be assumed or even safely concluded that the Olalia-Alay-ay killing was committed in pursuance of a political belief. At the time of the abduction and killing, there was no rebellion yet launched against the Corazon Aquino government. As aptly found by the Panel, the rebellion mounted by the RAM against the government was made long after the killings.^[16]

Kapunan, Jr. and Legaspi moved for reconsideration^[17] but their motion was denied in another resolution dated 9 February 1999.

Kapunan, Jr. filed his second petition for certiorari before the Court of Appeals docketed as CA-G.R. SP No. 52142^[18] while Legaspi brought his first petition docketed as CA-G.R. SP No. 52188. In these petitions, they impugned the 28 July 1998^[19] and 9 February 1999 letter-resolutions of the Secretary of Justice denying their appeal and approving their prosecution for the double murder of Olalia and Alay-ay.

In a Joint Decision dated 29 December 1999, the Special Sixth Division of the Court of Appeals dismissed the petition. Finding no grave abuse of discretion on the part of the Secretary of Justice, the appellate court refused to rule on the applicability of amnesty to Kapunan and Legaspi on the ground that this matter involves evaluation of evidence which is not within its jurisdiction to resolve in a petition for certiorari.^[20] It held, thus:

The Court of Appeals has held that:

x x x a perusal of the Certificate of Amnesty granted in favor of petitioner Kapunan, Jr. x x x and the certification issued in favor of petitioner Legaspi x x x inevitably brings us several questions of facts, to wit: (1) whether or not the murder of Rolando Olalia and Leonor Alay-ay were committed in pursuit of political beliefs; (2) whether or not said crimes of murder were committed for personal ends; and (3) whether or not the murder of victims Olalia and Alay-ay were disclosed in Legaspi's application because if only "mutiny" was invoked, then it follows that the subject crime of murder is not covered by the amnesty in favor of Legaspi - matters which are not within the province of this Court to determine in the present petitions.

x x x

Both Proclamations [Proclamation Nos. 347 and 348] unequivocally gives the impression that Proclamation No. 347 covers rebels and insurgent returnees and not personnel of the Armed Forces of the Philippines (AFP); and, that Proclamation No. 348 applies to all personnel of the AFP and the PNP, such as herein petitioners Kapunan and Legaspi who both

hold the rank of Colonel.

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Thus, another set of questions involving both factual and legal issues crop up - (1) whether or not petitioners are rebels/insurgents or personnel of the AFP, a factual issue which is not within the jurisdiction of this Court to ascertain in the present petitions for certiorari; and

(2) whether or not the amnesty granted to Kapunan and Legaspi under Proclamation No. 347 is valid; stated differently, are Kapunan and Legaspi covered by Proclamation No. 347 or No. 348? - a legal issue which is likewise not within the jurisdiction of this Court to determine under the present petitions for certiorari.

The determination of the above issues as to which proclamation covers petitioners is crucial considering that the crimes that are not covered by the amnesty under said Proclamations are different. Under Proclamation No. 347, all persons, more particularly, rebels and insurgents, who committed "crimes against chastity and other crimes committed for personal ends" cannot avail of amnesty; while under Proclamation No. 348, all personnel of the AFP and PNP who committed crimes which "constitute serious human rights violations, such as **acts of torture, extra-legal execution**, arson, massacre, rape, other crimes against chastity, or robbery of any form" are not entitled to amnesty.

Thus, it must be established first by competent evidence whether petitioners are rebels or insurgents covered by Proclamation No. 347 or members of the AFP covered by Proclamation No. 348. If petitioners are rebels or insurgents, then they may invoke the amnesty granted to them under Proclamation No. 347 at any stage of the criminal proceedings before the RTC of Antipolo as earlier discussed in this decision subject to the sound discretion of said court whether or not it will take judicial notice of the amnesty or admit further evidence to satisfy itself that the subject crimes of murder are covered by the amnesty granted to petitioners by the National Amnesty Commission. If petitioners are members of the AFP, then they should have been granted amnesty under Proclamation No. 348 and not under Proclamation No. 347; in which case, it becomes necessary to determine whether or not the subject crimes constitute "acts of torture or extra-legal execution." If in the affirmative, petitioners could not validly avail of the amnesty under Proclamation No. 348; and in the negative, then we go back to the question, is the amnesty granted to Kapunan and Legaspi under Proclamation No. 347 valid or not?

Clearly from the foregoing, Proclamation No. 347 or Proclamation No. 348 could not be applied automatically in favor of petitioners and they are not entitled to instant exoneration from criminal prosecution without first proving in court that the amnesty granted to them is not within the exceptions provided for in the Proclamations.

Furthermore, respondent Secretary of Justice did not commit any grave