

THIRD DIVISION

[G.R. No. 175162, October 29, 2008]

**ATTY. ERNESTO A. TABUJARA III AND CHRISTINE S. DAYRIT,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND DAISY
AFABLE, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

This petition assails the 24 February 2004 Decision of the Court of Appeals in CA-G.R. SP No. 63280 denying petitioners' petition for review and directing the Municipal Trial Court of Meycauayan, Bulacan, Branch 11, to proceed with the trial of Criminal Cases Nos. 99-29037 and 99-29038, as well as the 23 October 2006 Resolution denying the motion for reconsideration.

The antecedent facts are as follows:

On 17 September 1999, respondent Daisy Dadivas-Afable simultaneously filed two criminal complaints against petitioners for Grave Coercion and Trespass to Dwelling. The complaints read, thus:

Art. 286 (Grave Coercion).

That on the 14th day of September 1999 at around 6:00 o'clock in the morning more or less, in Brgy. Iba, Municipality of Meycauayan, Province of Bulacan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused without authority of law, by conspiring, confederating and mutually helping to (sic) one another, did then and there willfully, unlawfully and feloniously forced to go with them one DAISY DADIVAS-AFABLE and against the latter's will.

Art. 280, par. 2 (Trespass to Dwelling).

That on the 14th day of September 1999 at around 6:00 o'clock in the morning more or less, in Brgy. Iba, Municipality of Meycauayan, Province of Bulacan, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then a (sic) private persons, by conspiring, confederating and mutually helping to (sic) one another, did then and there willfully, unlawfully and feloniously enter the house owned by one DAISY DADIVAS-AFABLE by opened the gate and against the latter's will.^[1]

On 18 October 1999, petitioners filed their Joint Counter-Affidavit.^[2] Thereafter, or on 21 December 1999, petitioner Tabujara filed a Supplemental Counter-Affidavit.^[3]

Petitioners denied the allegations against them. They argued that on 14 September 1999, they went to the house of respondent to thresh out matters regarding some missing pieces of jewelry. Respondent was a former employee of Miladay Jewels, Inc., a company owned by the Dayrits and who was then being administratively investigated in connection with missing jewelries. Despite several summons to appear, respondent went on AWOL (absence without official leave).

Judge Calixtro O. Adriatico of the Municipal Trial Court of Meycauayan, Bulacan, Branch II, conducted the preliminary examination. On 7 January 2000, he issued an Order dismissing the complaints for lack of probable cause, thus:

After a careful perusal of the allegation setforth in the complaint-affidavit, taking into consideration the allegation likewise setforth in the counter-affidavit submitted by the respondents and that of their witnesses, the Court finds no probable cause to proceed with trial on the merits of the above-entitled cases.

The Court believes and so holds that the instant complaints are merely leverage to the estafa^[4] case already filed against private complainant herein Daisy Afable by the Miladay Jewels Inc. wherein respondent Atty. Tabujara III is its legal counsel; while respondent Dayrit appears to be one of the officers of the said company.

As could be gleaned from the record, private complainant herein Daisy Afable is being charged with the aforestated estafa case for having allegedly embezzled several pieces of jewelry from the Miladay Jewels Inc., worth P2,177,156.00.

WHEREFORE, let these cases be dismissed for lack of probable cause.^[5]

Respondent filed a Motion for Reconsideration alleging that when she filed the complaints for grave coercion and trespass to dwelling on 17 September 1999 against petitioners, no information for estafa has yet been filed against her. In fact, the information was filed on 5 October 1999.

In their Opposition to the Motion for Reconsideration, petitioners argued that even before respondent filed the criminal complaints for grave coercion and trespass to dwelling, she was already being administratively investigated for the missing jewelries; that she was ordered preventively suspended pending said investigation; that the theft of the Miladay jewels was reported to the Makati Police on 7 September 1999 with respondent Afable being named as the primary suspect; that on 17 September 1999, which corresponded to the date of filing of the criminal complaints against petitioners, the employment of respondent with Miladay, Jewels, Inc. was terminated. Petitioners further alleged that respondent filed the criminal complaints for grave coercion and trespass to dwelling as leverage to compel petitioners to withdraw the estafa case.

On 2 May 2000, Judge Adriatico issued an Order reversing his earlier findings of lack of probable cause. This time, he found probable cause to hold petitioners for trial and to issue warrants of arrest, thus:

Acting on the "Motion for Reconsideration" filed by the private complainant herein on January 17, 2000, with "Opposition..." filed by the accused on January 27, 2000, taking into consideration the "Manifestation/Brief Memorandum" filed by the said private complainant on March 4, 2000, the Court found cogent reason to reconsider its order dated January 7, 2000.

The sworn allegation/statement of witness Mauro V. de Lara, which was inadvertently overlooked by the undersigned, and which states, among other things, that said witness saw the private complainant herein being forcibly taken by three persons, referring very apparently to the accused herein, from her residence is already sufficient to establish a prima facie evidence or probable cause against the herein accused for the crimes being imputed against them. It is likewise probable that accused herein could have committed the crime charged in view of their belief that the private complainant herein had something to do with the alleged loss or embezzlement of jewelries of the Miladay Jewels.

WHEREFORE, in order to ferret out the truth/veracity of the complainant's allegation and in order not to frustrate the ends of justice, let the above-entitled cases now be set for trial.

Let therefore warrant of arrest be issued against all the accused in Criminal Case No. 99-29038 (Grave Coercions), fixing their bail for their provisional liberty in the amount of P12,000.00 for each of them.

As regard Criminal Case No. 99-29037 (Trespass to Dwelling) the same shall be governed by the Rules on Summary Procedure.^[6]

Petitioners filed a motion for reconsideration insisting that the alleged affidavit of Mauro V. de Lara on which the court *a quo* based its findings of probable cause was hearsay because it was not sworn before Judge Adriatico; that De Lara did not personally appear before the investigating judge during preliminary investigation. However, petitioners' motion for reconsideration was denied in the Order dated 14 July 2000, thus:

Acting on the "Motion for Reconsideration" filed by the accused, thru counsel. With comment from the counsel of the private complainant, the Court resolves to deny the same there being no cogent reason to reconsider the Court order dated May 2, 2000.

The Court has resolved to try the above-entitled cases on the merits so as to ferret out the truth of the private complainant's allegations and there being probable cause to warrant criminal prosecution of the same.

The accused's contention that the statement of witness Mauro de Lara is bereft of credibility and that the complaints at bar were initiated merely for harassment purposes could be ventilated well in a full blown trial.

WHEREFORE, in view of the foregoing reason, let the trial of these cases proceed as already scheduled.^[7]

Petitioners moved for clarificatory hearings which were conducted on 23 August 2000 and 31 August 2000. However, before the court *a quo* could render a resolution based on said clarificatory hearings, petitioners filed on 15 September 2000 a petition for *certiorari* before the Regional Trial Court with prayer for issuance of temporary restraining order and writ of preliminary injunction.^[8] Petitioners sought to annul the 2 May 2000 and 14 July 2000 Orders of the court *a quo* for having been issued with grave abuse of discretion. Petitioners argued that the court *a quo* gravely abused its discretion in issuing said Orders finding probable cause and ordering the issuance of warrants of arrest based solely on the unsworn statement of Mauro V. de Lara who never appeared during preliminary investigation and who was not personally examined by the investigating judge.

On 18 September 2000, Executive Judge Danilo A. Manalastas of the Regional Trial Court of Malolos, Bulacan, Branch 7, issued an Order^[9] granting a 72-hour temporary restraining order and enjoining the Municipal Trial Court from proceeding with the prosecution of petitioners in Criminal Case Nos. 99-29037 and 99-29038.

The case was thereafter raffled to Branch 79 which rendered its Decision^[10] denying the petition for annulment of the 2 May 2000 and 14 July 2000 Orders of the Municipal Trial Court. The Regional Trial Court found that after conducting clarificatory hearings, the court *a quo* issued an Order on 18 September 2000, finding probable cause. The Regional Trial Court further ruled that any defect in the issuance of the 2 May 2000 and 14 July 2000 Orders finding probable cause based **solely** on the unsworn statement of Mauro V. de Lara who failed to appear during the preliminary examination and who was not personally examined by the investigating judge, was cured by the issuance of the **18 September 2000** Order. The Regional Trial Court reasoned, thus:

While it is true that respondent Judge Hon. Calixto O. Adriatico dismisses both criminal cases last January 7, 2000 finding no probable cause and later on reverse himself by issuing the question Order dated May 2, 2000 alleging among others that said Judge inadvertently overlooked the statement of witness Mauro V. De Lara, the stubborn facts remain that whatever defects, or shortcomings on the parts of the respondent Judge was cured when he conducted clarificatory examination on the dates earlier mentioned in this Order.^[11]

The dispositive portion of the Decision of the Regional Trial Court, reads:

RESPONSIVE OF ALL THE FOREGOING, the instant Petition for the Annulment of the Orders of the respondent Judge dated May 2, 2000 and July 14, 2000 in criminal cases nos. 99-29037 and 99-29038 (MTC-Meycauayan, Branch 2) should be as it is hereby denied for lack of merit.

ACCORDINGLY, the Presiding Judge of branch II, the Hon. Calixto O. Adriatico may now proceed to hear and decide crim. Cases nos. 99-29037 and 99-29038 pending before that Court.^[12]

Petitioners filed a Petition for Review before the Court of Appeals asserting that the court *a quo* acted with grave abuse of discretion in basing its findings of probable cause and ordering the issuance of warrants of arrest solely on the unsworn statement of Mauro De Lara who never appeared during preliminary investigation

and who was not personally examined by the investigating judge. Moreover, they argued that the 18 September 2000 Order was void because it was issued by the Municipal Trial Court while the temporary restraining order issued by the Regional Trial Court enjoining the court *a quo* to proceed further with the criminal complaints was in force.

However, the Court of Appeals denied the petition on the ground that petitioners resorted to the wrong mode of appeal; *i.e.*, instead of an ordinary appeal, petitioners filed a petition for review. ^[13] The dispositive portion of the Decision of the Court of Appeals, reads:

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby DENIED. The Municipal Trial Court of Meycauayan, Bulacan, Branch II is directed to proceed with the trial of Criminal Case Nos. 99-29037 and 99-29038 and to dispose of them with deliberate dispatch.^[14]

Petitioners filed a motion for reconsideration but it was denied.^[15] Hence, the instant petition raising the following assignment of errors:

I.

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE TRIAL COURT HAD ACTED WITH GRAVE ABUSE OF DISCRETION IN BASING ITS FINDING OF PROBABLE CAUSE TO HOLD PETITIONERS FOR TRIAL ON THE MERITS AND ISSUANCE OF WARRANTS OF ARREST AGAINST THEM, UPON AN UNSWORN STATEMENT OF A WITNESS WHO NEVER APPEARED BEFORE, NOR WAS PERSONALLY EXAMINED BY, THE TRIAL COURT.

A. THE CONSTITUTION GUARANTEES THAT NO WARRANT OF ARREST SHALL ISSUE EXCEPT UPON PROBABLE CAUSE TO BE DETERMINED PERSONALLY BY THE JUDGE AND AFTER PERSONALLY EXAMINING UNDER OATH THE COMPLAINANT AND WITNESSES.

II.

PETITIONERS ASSERT THEIR RIGHT GUARANTEED BY THE CONSTITUTION WHICH TAKES PRECEDENCE OVER RULES OF PROCEDURE OR TECHNICALITIES.

A. IT IS WELL-SETTLED THAT THIS HONORABLE COURT IS BOUND BY THE ALLEGATIONS IN THE PETITION AND NOT BY ITS CAPTION.^[16]

Petitioners insist that the Orders of the court *a quo* dated 2 May 2000 and 14 July 2000 should be annulled for having been issued with grave abuse of discretion because the finding of probable cause was based solely on the unsworn statement of Mauro De Lara who never appeared during the preliminary examination. Petitioners also allege that since De Lara never appeared before the investigating judge, his statement was hearsay and cannot be used as basis for finding probable cause for the issuance of warrant of arrest or to hold petitioners liable for trial. Granting that