

THIRD DIVISION

[G.R. NO. 147932, January 25, 2006]

**LAILA G. DE OCAMPO, PETITIONER, VS. THE HONORABLE
SECRETARY OF JUSTICE, MAGDALENA B. DACARRA, AND
ERLINDA P. ORAYAN, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This petition for *certiorari*^[1] assails the Resolutions dated 15 September 2000 and 19 April 2001 of the Secretary of the Department of Justice ("DOJ Secretary") in I.C. No. 99-6254.^[2] The DOJ Secretary^[3] denied Laila G. De Ocampo's ("petitioner") petition for review of the investigating prosecutor's finding of probable cause against her for homicide^[4] in relation to Section 10(a), Article VI of Republic Act No. 7610 ("RA 7610")^[5] and for violation of the same provision of RA 7610. The DOJ Secretary^[6] also denied petitioner's motion for reconsideration.

The Facts

The present case arose from a sworn statement of respondent Magdalena B. Dacarra ("Magdalena") executed before the Women's Desk of the CPD Police Station in Batasan Hills, Quezon City on 10 December 1999. Magdalena stated that on 4 December 1999, her nine-year-old son Ronald complained of dizziness upon arriving home at about six in the evening. Ronald then vomited, prompting Magdalena to ask what happened. Ronald replied that petitioner, who was Ronald's teacher, banged his head against that of his classmate Lorendo Orayan ("Lorendo"). Magdalena inspected Ronald's head and saw a woundless contusion. Due to Ronald's continued vomiting, Magdalena brought him to a quack doctor (*arbularyo*) on 5 December 1999. The following morning, Magdalena brought Ronald to the East Avenue Medical Center where he underwent an x-ray. The attending physician informed Magdalena that Ronald's head had a fracture. Blood oozed out of Ronald's nose before he died on 9 December 1999.

Lorendo also executed a sworn statement narrating how petitioner banged his head against Ronald's.

During the inquest proceedings on 14 December 1999, Assistant Quezon City Prosecutor Maria Lelibet Sampaga ("inquest prosecutor") ruled as follows:

Evidence warrants the release of the respondent for further investigation of the charges against her. The case is not proper for inquest as the incident complained of happened on December 4, 1999. Further, we find the evidence insufficient to support the charge for homicide against the

respondent. There is no concrete evidence to show proof that the alleged banging of the heads of the two minor victims could be the actual and proximate cause of the death of minor Ronald Dacarra y Baluton. Besides, the police report submitted by the respondent in this case states that said victim bears stitches or sutures on the head due to a vehicular accident. There is no certainty, therefore, that respondent's alleged wrongdoing contributed or caused the death of said victim.^[7]

Subsequently, the case was referred to Assistant Quezon City Prosecutor Lorna F. Catris-Chua Cheng ("investigating prosecutor") for preliminary investigation. She scheduled the first hearing on 6 January 2000.

Respondent Erlinda P. Orayan ("Erlinda"), Lorendo's mother, attended the hearing of 6 January 2000 and alleged that petitioner offered her P100,000, which she initially accepted, for her and her son's non-appearance at the preliminary investigation. Erlinda presented the money to the investigating prosecutor.

On 7 January 2000, Jennilyn Quirong, who witnessed the head-banging incident, and Melanie Lugaes, who claimed to be another victim of petitioner's alleged cruel deeds, filed their sworn statements with the Office of the Quezon City Prosecutor.

On 18 January 2000, petitioner submitted her counter-affidavit. Petitioner invoked the disposition of the inquest prosecutor finding insufficient evidence to support the charges against her. Petitioner assailed the omission in Magdalena's sworn statement about Ronald's head injury due to a vehicular accident in November 1997. Petitioner pointed out the absence of damage or injury on Lorendo as borne out by his medical certificate. Petitioner contended that the head-banging incident was not the proximate cause of Ronald's death, but the failed medical attention or medical negligence. Petitioner also alleged that Jennilyn Quirong and Melanie Lugaes have immature perception. Petitioner further asserted that the causes of death stated in Ronald's Death Certificate are hearsay and inadmissible in the preliminary investigation.

Ronald's Death Certificate shows the immediate cause of his death as "Cardio Pulmonary Arrest," the underlying cause as "Cerebral Edema," and other significant conditions contributing to death as "Electrolyte imbalance and vomiting." The Autopsy Report, obtained by the investigating prosecutor from the PNP Crime Laboratory in Camp Crame, states the cause of death as "Intracranial hemorrhage secondary to traumatic injury of the head."

The investigating prosecutor issued a Resolution finding probable cause against petitioner for the offenses charged. The dispositive portion of the Resolution reads:

WHEREFORE, in view of the foregoing, it is respectfully recommended that [petitioner] be charged with Homicide in relation to Art. VI, Sec. 10 of R.A. 7610 and Violation of Art. VI, Sec. 10(a) of R.A. 7610 with no bail recommended for the Homicide since par. 6 of Art. VI of Sec. 10 of R.A. 7610 provides that:

"For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, par. 2 and 263, par. 1 Act No. 3815, as amended, the Revised Penal Code, for

the crimes of murder, homicide, other intentional mutilation and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve (12) years of age."

Bail recommended: No bail recommended – Homicide, in relation to Art. VI, Sec. 10, R.A. 7610; and Twenty Thousand pesos (P20,000.00) – Viol. of Sec. 10(a) of R.A. 7610^[8] Consequently, petitioner filed a petition for review with the DOJ.

In her appeal to the DOJ, petitioner contended that the investigating prosecutor showed bias in favor of complainants Magdalena and Erlinda ("complainants") for not conducting a clarificatory hearing and unilaterally procuring the autopsy report. Petitioner argued that the investigating prosecutor erred in concluding that her alleged act of banging Ronald and Lorendo's heads was the cause of Ronald's injury and that such was an act of child abuse. Petitioner also alleged that it is the Office of the Ombudsman which has jurisdiction over the case, and not the Quezon City Prosecutor's Office.

The Resolution of the DOJ Secretary

The DOJ Secretary denied the petition for review. The DOJ Secretary held that there was no bias in complainants' favor when the investigating prosecutor did not conduct a clarificatory hearing and unilaterally procured the autopsy report as nothing precluded her from doing so.

The DOJ Secretary upheld the investigating prosecutor's finding that Ronald's injury was the direct and natural result of petitioner's act of banging Ronald and Lorendo's heads. The DOJ Secretary stated that petitioner never denied such act, making her responsible for all its consequences even if the immediate cause of Ronald's death was allegedly the failed medical attention or medical negligence. The DOJ Secretary held that assuming there was failure of medical attention or medical negligence, these inefficient intervening causes did not break the relation of the felony committed and the resulting injury.

The DOJ Secretary rejected petitioner's claim that she is innocent as held by the inquest prosecutor. The inquest prosecutor did not dismiss the case. She merely recommended petitioner's release for further investigation since the case was not proper for inquest and the evidence was then insufficient.

The DOJ Secretary further stated that the omission in Magdalena's sworn statement about Ronald's head injury due to a vehicular accident in November 1997 and the absence of any injury on Lorendo are inconsequential.

Moreover, the DOJ Secretary ruled that whether the statements of the causes of death in the death certificate and autopsy report are hearsay, and whether Jennilyn Quirong and Melanie Lugaes have immature perception, are evidentiary matters which should be determined during trial. The DOJ Secretary also sustained the investigating prosecutor's conclusion that the banging of Ronald and Lorendo's heads is an act of child abuse.

Petitioner filed a motion for reconsideration^[9] which the DOJ Secretary denied in his Resolution dated 19 April 2001.^[10]

Hence, this petition.

The Issues

Petitioner raises the following issues:

1. Whether petitioner was denied due process during the preliminary investigation; and
2. Whether there is probable cause against petitioner for homicide under Article 249 of the Revised Penal Code in relation to Section 10(a), Article VI of RA 7610 and for violation of Section 10(a), Article VI of RA 7610.

The Ruling of the Court

The petition lacks merit.

Before resolving the substantive issues in this case, the Court will address the procedural issue raised by the Office of the Solicitor General ("OSG").^[11] The OSG contends that instead of Rule 65, Rule 43 is applicable to the present case. Thus, the OSG argues that the petition should be dismissed outright for being filed with this Court, instead of with the Court of Appeals, under a wrong mode of appeal. On the other hand, assuming Rule 65 applies, the OSG points out that the petition for *certiorari* should be filed with the Court of Appeals.

Based on Memorandum Circular No. 58,^[12] the resolution of the DOJ Secretary is appealable administratively to the Office of the President since the offenses charged in this case are punishable by *reclusion perpetua*.^[13] From the Office of the President, the aggrieved party may file an appeal with the Court of Appeals pursuant to Rule 43.^[14]

Even assuming that the DOJ Secretary committed grave abuse of discretion in rendering the assailed Resolutions amounting to lack or excess of jurisdiction, petitioner should have filed the instant petition for *certiorari* with the Court of Appeals. Hence, on the issue alone of the propriety of the remedy sought by petitioner, this petition for *certiorari* must fail. However, considering the gravity of the offenses charged and the need to expedite the disposition of this case, the Court will relax the rules and finally resolve this case in the interest of substantial justice.

Whether petitioner was denied due process during the preliminary investigation

Absence of a clarificatory hearing

The Court rejects petitioner's contention that she was denied due process when the investigating prosecutor did not conduct a clarificatory hearing. A clarificatory hearing is not indispensable during preliminary investigation. Rather than being mandatory, a clarificatory hearing is optional on the part of the investigating officer as evidenced by the use of the term "may" in Section 3(e) of Rule 112. This provision states:

(e) **If the investigating officer believes that there are matters to be clarified**, he **may** set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. xxx^[15] (emphasis supplied)

The use of the word "may" in a statute commonly denotes that it is directory in nature. The term "may" is generally permissive only and operates to confer discretion.^[16] Under Section 3(e) of Rule 112, it is within the discretion of the investigation officer whether to set the case for further hearings to clarify some matters.

In this case, the investigating prosecutor no longer conducted hearings after petitioner submitted her counter-affidavit. This simply means that at that point the investigating prosecutor believed that there were no more matters for clarification. It is only in petitioner's mind that some "crucial points" still exist and need clarification. In any event, petitioner can raise these "important" matters during the trial proper.

Petitioner was not deprived of due process since both parties were accorded equal rights in arguing their case and presenting their respective evidence during the preliminary investigation. Due process is merely an opportunity to be heard.^[17] Petitioner cannot successfully invoke denial of due process since she was given the opportunity of a hearing.^[18] She even submitted her counter-affidavit to the investigating prosecutor on 18 January 2000.

Preliminary investigation is merely inquisitorial. It is not a trial of the case on the merits.^[19] Its sole purpose is to determine whether a crime has been committed and whether the respondent is **probably guilty** of the crime.^[20] It is not the occasion for the full and exhaustive display of the parties' evidence.^[21] Hence, if the investigating prosecutor is already satisfied that he can reasonably determine the existence of probable cause based on the parties' evidence thus presented, he may terminate the proceedings and resolve the case.

Obtaining a copy of the autopsy report

Petitioner argues that she was denied the right to examine evidence submitted by complainants when the investigating prosecutor unilaterally obtained a copy of the autopsy report from the PNP Crime Laboratory.

Petitioner fails to persuade us. Though the autopsy report is not part of the parties' evidence, the Rules on preliminary investigation do not forbid the investigating prosecutor from obtaining it. Neither is there a law requiring the investigating prosecutor to notify the parties before securing a copy of the autopsy report. The autopsy report, which states the causes of Ronald's death, can either absolve or condemn the petitioner. Unfortunately for petitioner, the investigating prosecutor found that the autopsy report bolstered complainants' allegations.

Moreover, there is nothing to support petitioner's claim that the investigating prosecutor was biased in favor of complainants. There are other pieces of evidence aside from the autopsy report upon which the investigating prosecutor based her