

## SECOND DIVISION

[ G.R. No. 165596, November 17, 2005 ]

**ESMAEL ORQUINAZA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RTC JUDGE OF BRANCH 35, CALAMBA CITY, MTC JUDGE OF CALAMBA CITY AND EDELYN ARIDA, RESPONDENTS.**

### DECISION

**PUNO, J.:**

Petitioner Esmael Orquinaza filed the instant petition for review assailing the Decision dated July 21, 2004 of the Regional Trial Court (RTC) of Calamba, Laguna, Branch 35 in Civil Case No. 3485-2003-C and its Order dated October 4, 2004.

The facts are as follows:

On February 5, 2003, respondent Edelyn Arida, together with her witness, Julio Espinili, executed a sworn statement before the Calamba City Police Station regarding the alleged act of petitioner of kissing her and touching her breasts while she was taking a nap inside the Development Room of the Calamba Model Makers factory.<sup>[1]</sup> Arida was an employee of Calamba Model Makers while petitioner was its General Manager. In a letter dated February 5, 2003, SPO4 Filipina Manaig referred the case of sexual harassment to the City Prosecutor of Calamba for evaluation and proper disposition.<sup>[2]</sup>

On February 13, 2003, Assistant City Prosecutor Rodel Paderayon issued a subpoena ordering respondent Arida and petitioner to appear at the Office of the Provincial/City Prosecutor for preliminary investigation.<sup>[3]</sup>

Petitioner filed a motion to dismiss before the Office of the City Prosecutor, arguing that the affidavits of Arida and Espinili do not contain allegations to constitute the crime of sexual harassment.<sup>[4]</sup>

On March 25, 2003, Assistant City Prosecutor Paderayon issued a resolution finding that there was no transgression of the anti-sexual harassment law, but petitioner's act of grabbing complainant's breasts and kissing her is punishable under another law for acts of lasciviousness.<sup>[5]</sup> Thus, he filed with the Municipal Trial Court in Cities (MTCC) an information charging petitioner with acts of lasciviousness. The information states:

That on or about 12:45 o'clock [sic] in the afternoon of January 16, 2003 in Brgy. Halang, City of Calamba and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there, wil[l]fully, unlawfully and feloniously grab the breasts and kiss EDELYN ARIDA y PONCE, while the latter was asleep inside the development room of Calamba Model Makers, Inc., without her consent,

to her damage and prejudice.

CONTRARY TO LAW.<sup>[6]</sup>

The case was docketed as Crim. Case No. 40217-03.

On April 10, 2003, Judge Wilhelmina B. Jorge-Wagan issued a warrant of arrest against petitioner.<sup>[7]</sup>

Petitioner filed with the court an omnibus motion praying that (1) the warrant of arrest be recalled, (2) the information be quashed, (3) the arraignment be invalidated and set aside, and (4) the case be dismissed. He argued primarily that the information for acts of lasciviousness was void as the preliminary investigation conducted by the prosecutor was for sexual harassment and not for acts of lasciviousness. He claimed to have been deprived of his right to due process.<sup>[8]</sup>

The motion was denied in an order dated June 4, 2003.<sup>[9]</sup> The court held that the authority to ascertain what charge or offense should be filed based on the evidence belongs to the public prosecutors and not to the courts. The court said:

It need not be overemphasized that public prosecutors have the option to ascertain which prosecutions should be initiated on the basis of the evidence at hand. That a criminal act may have elements common to more than one offense does not rob the prosecutor of that option (or discretion) and mandatorily require him to charge the lesser offense although the evidence before him may warrant prosecution of the more serious one. Conversely, this holds true if the prosecutor found, after conducting the preliminary investigation, that a lesser offense should be filed instead. As to limit this authority would eventually undermine the authority of the prosecutor and impose an intolerable burden on the trial court. x x x<sup>[10]</sup>

Petitioner filed a motion for reconsideration<sup>[11]</sup> which was likewise denied,<sup>[12]</sup> prompting him to file a petition for certiorari with the RTC of Calamba City. Petitioner invoked the same arguments raised before the MTCC.<sup>[13]</sup>

The RTC, in its Decision dated July 21, 2004<sup>[14]</sup> and its Order dated October 4, 2004,<sup>[15]</sup> affirmed the order of the MTCC.

Hence, this petition where petitioner cites the following assignment of errors:

1. The court a quo erred in not finding that information for "acts of lasciviousness" is null and void for lack of preliminary investigation on the offense charged in the information.
2. The court a quo erred in finding that the Omnibus Motion to Recall Warrant of Arrest, Motion to Quash Information, and to Dismiss the case was not timely interposed.<sup>[16]</sup>

The petition is unmeritorious.

The Court's ruling in **People v. Casiano**<sup>[17]</sup> applies to the case at bar. In that case, a preliminary investigation was conducted for the charge of estafa against the accused. However, upon conclusion of the preliminary investigation, the provincial fiscal filed an information for illegal possession and use of a false treasury or bank notes against her. Counsel for the accused filed a motion to dismiss on the ground that there had been no preliminary investigation of the charge of illegal possession and use of a false bank notes, and that absence of such preliminary investigation affected the jurisdiction of the court. The trial court granted said motion. This Court, reversing the decision of the trial court, held:

x x x The issue before us is whether defendant is entitled to a preliminary investigation of the crime of illegal possession and use of a false bank note *as charged in the information herein*. **The answer to this question depends upon whether or not such crime was included actually in the allegations of the amended complaint filed with the justice of the peace court, regardless of the term used in said pleading to designate the offense charged therein.**

In this connection, the offended party, Ricardo Macapagal, averred in the amended complaint that the —

accused under false manifestation and fraudulent representations which she made to Ricardo Macapagal, that a check on its face valued at \$300.00 and numbered 728681, was good and genuine as it was drawn by the American Bankers Association against the Guaranty Trust Company of New York in favor of Domingo Flores as Payee, sold to Ricardo Macapagal said check for P580.00 Philippine Currency, which manifestations and representations the accused well knew were false and fraudulent and were only made to induce the aforementioned Ricardo Macapagal to buy said check as he in fact bought said check, paying to mentioned accused the stated amount of P580.00, which amount the accused converted unlawfully to her own use and benefit to the damage and prejudice of Ricardo Macapagal in said sum for the reason that the check upon presentation for collection was dishonored on the ground that it was fraudulent.

Thus, complainant alleged in said amended complaint – as he did in the original complaint – that defendant appellee had knowingly had in her possession, with intent to use, and actually used, a false or falsified bank note or other obligation payable to bearer, which is the crime defined and punished in Article 168, in relation to Article 166, of the Revised Penal Code, and the substance of the charge contained in the information above quoted.

In other words, regardless of whether or not the crime of "estafa" includes or is included in that of illegal possession or use of a false bank note or other obligation payable to bearer, the Court of First Instance of Pangasinan erred in holding that the allegations of the information filed in this case were not included in those of the aforementioned amended complaint and that defendant-appellee was entitled to another

preliminary investigation of the charge contained in the information. It erred, also, in dismissing the case for, even if defendant had a right to such other preliminary investigation, the same was deemed waived upon her failure to invoke it prior to or, at least, at the time of the entry of her plea in the court of first instance. **Independently of the foregoing, the absence of such investigation did not impair the validity of the information or otherwise render it defective. Much less did it affect the jurisdiction of the court of first instance over the present case. Hence, had defendant-appellee been entitled to another preliminary investigation, and had his plea of not guilty upon arraignment not implied a waiver of said right, the court of first instance should have, either conducted such preliminary investigation, or ordered the Provincial Fiscal to make it, in pursuance of section 1687 of the Revised Administrative Code (as amended by Republic Act No. 732), or remanded the record for said investigation to the justice of the peace court, instead of dismissing the case, as it did in the order appealed from.**<sup>[18]</sup>  
(citations omitted, emphases supplied)

In the case at bar, the complainant gave the following statement before the Calamba City Police Station:

*T: Bakit ka naririto sa himpilan ng pulisya ng Calamba?*

*S: Para po ireklamo itong si ESMAEL ORQUINAZA sa ginawang panghahalik at panghihipo sa aking suso.*

X X X

*T: Isalaysay mo nga kung paano ito naganap?*

*S: Nasa trabaho ko po noon ako sa pabrika at kasalukuyang namamahinga ako at naidlip na nakasubsob sa lamesa sa loob ng DEVELOPMENT ROOM namin ng bigla na lang ako magulat dahil bigla na lang akong dinakot sa aking magkabilang suso mula sa likod nitong si ESMAEL ORQUINAZA tuloy halik sa aking bibig kaya sa gulat ko ay napatayo ako at natigilan na tanging ang nasabi ko ay "SIR, BAKIT HO?" na wala itong sinabi kundi tumawa lang sa akin kung kaya dali-dali akong lumabas at agad ay sinabi ko sa aking kasamahan na si BERT CAPILI at TESSIE CABUHAT na aking kapatid at kasamahan din doon at sinabihan naman ako ng mga ito na "MANAHIMIK KA NA LANG AT TALAGANG GANYAN IYAN, MANYAK IYAN" kaya di na ako kumibo.*

*T: Ano pa ang sumunod na pangyayari?*

*S: Noon pong kinasabadohan ay nakasalubong ko ito at dahil kabiruan ko noon ang aking mga kasamahan kung kaya nagtatawanan kami at sinabihan ako nito ng "MUKHANG MASAYA KA DAHIL NAKIPAGHALIKAN KA" na sinagot ko naman ng "MUKHA NYO" at tatawa-tawa pa rin na parang nakakaloko habang palayo ako, kaya noong kinagabihan ay sinabi ko na ang nangyari sa asawa ko kung kaya nag-away kami na hindi naman ako nito naunawaan kung kaya pinalayas pa ako sa bahay kaya*