

SECOND DIVISION

[G.R. No. 124644, February 05, 2004]

ARNEL ESCOBAL, PETITIONER, VS. HON. FRANCIS GARCHITORENA, PRESIDING JUSTICE OF THE SANDIGANBAYAN, ATTY. LUISABEL ALFONSO-CORTEZ, EXECUTIVE CLERK OF COURT IV OF THE SANDIGANBAYAN, HON. DAVID C. NAVAL, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF NAGA CITY, BRANCH 21, LUZ N. NUECA, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

This is a petition for certiorari with a prayer for the issuance of a temporary restraining order and preliminary injunction filed by Arnel Escobal seeking the nullification of the remand by the Presiding Justice of the Sandiganbayan of the records of Criminal Case No. 90-3184 to the Regional Trial Court (RTC) of Naga City, Branch 21.

The petition at bench arose from the following milieu:

The petitioner is a graduate of the Philippine Military Academy, a member of the Armed Forces of the Philippines and the Philippine Constabulary, as well as the Intelligence Group of the Philippine National Police. On March 16, 1990, the petitioner was conducting surveillance operations on drug trafficking at the *Sa Harong Cafx™ Bar and Restaurant* located along Barlin St., Naga City. He somehow got involved in a shooting incident, resulting in the death of one Rodney Rafael N. Nueva. On February 6, 1991, an amended Information was filed with the RTC of Naga City, Branch 21, docketed as Criminal Case No. 90-3184 charging the petitioner and a certain Natividad Bombita, Jr. alias "Jun Bombita" with murder. The accusatory portion of the amended Information reads:

That on or about March 16, 1990, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court by virtue of the Presidential Waiver, dated June 1, 1990, with intent to kill, conspiring and confederating together and mutually helping each other, did, then and there, willfully, unlawfully and feloniously attack, assault and maul one Rodney Nueva and accused 2Lt Arnel Escobal armed with a caliber .45 service pistol shoot said Rodney Nueva thereby inflicting upon him serious, mortal and fatal wounds which caused his death, and as a consequence thereof, complainant LUZ N. NUECA, mother of the deceased victim, suffered actual and compensatory damages in the amount of THREE HUNDRED SIXTY-SEVEN THOUSAND ONE HUNDRED SEVEN & 95/100 (P367,107.95) PESOS, Philippine Currency, and moral and exemplary damages in the amount of ONE HUNDRED THIRTY-FIVE THOUSAND (P135,000.00) PESOS, Philippine Currency.^[1]

On March 19, 1991, the RTC issued an Order preventively suspending the petitioner from the service under Presidential Decree No. 971, as amended by P.D. No. 1847. When apprised of the said order, the General Headquarters of the PNP issued on October 6, 1992 Special Order No. 91, preventively suspending the petitioner from the service until the case was terminated.^[2]

The petitioner was arrested by virtue of a warrant issued by the RTC, while accused Bombita remained at large. The petitioner posted bail and was granted temporary liberty.

When arraigned on April 9, 1991,^[3] the petitioner, assisted by counsel, pleaded not guilty to the offense charged. Thereafter, on December 23, 1991, the petitioner filed a Motion to Quash^[4] the Information alleging that as mandated by Commonwealth Act No. 408,^[5] in relation to Section 1, Presidential Decree No. 1822 and Section 95 of R.A. No. 6975, the court martial, not the RTC, had jurisdiction over criminal cases involving PNP members and officers.

Pending the resolution of the motion, the petitioner on June 25, 1993 requested the Chief of the PNP for his reinstatement. He alleged that under R.A. No. 6975, his suspension should last for only 90 days, and, having served the same, he should now be reinstated. On September 23, 1993,^[6] the PNP Region V Headquarters wrote Judge David C. Naval requesting information on whether he issued an order lifting the petitioner's suspension. The RTC did not reply. Thus, on February 22, 1994, the petitioner filed a motion in the RTC for the lifting of the order of suspension. He alleged that he had served the 90-day preventive suspension and pleaded for compassionate justice. The RTC denied the motion on March 9, 1994.^[7] Trial thereafter proceeded, and the prosecution rested its case. The petitioner commenced the presentation of his evidence. On July 20, 1994, he filed a Motion to Dismiss^[8] the case. Citing *Republic of the Philippines v. Asuncion, et al.*,^[9] he argued that since he committed the crime in the performance of his duties, the Sandiganbayan had exclusive jurisdiction over the case.

On October 28, 1994, the RTC issued an Order^[10] denying the motion to dismiss. It, however, ordered the conduct of a preliminary hearing to determine whether or not the crime charged was committed by the petitioner in relation to his office as a member of the PNP.

In the preliminary hearing, the prosecution manifested that it was no longer presenting any evidence in connection with the petitioner's motion. It reasoned that it had already rested its case, and that its evidence showed that the petitioner did not commit the offense charged in connection with the performance of his duties as a member of the Philippine Constabulary. According to the prosecution, they were able to show the following facts: (a) the petitioner was not wearing his uniform during the incident; (b) the offense was committed just after midnight; (c) the petitioner was drunk when the crime was committed; (d) the petitioner was in the company of civilians; and, (e) the offense was committed in a beerhouse called "*Sa Harong Cafx™ Bar and Restaurant.*"^[11]

For his part, the petitioner testified that at about 10:00 p.m. on March 15, 1990, he was at the *Sa Harong Cafx™ Bar and Restaurant* at Barlin St., Naga City, to conduct

surveillance on alleged drug trafficking, pursuant to Mission Order No. 03-04 issued by Police Superintendent Rufo R. Pulido. The petitioner adduced in evidence the sworn statements of Benjamin Carixio and Roberto Fajardo who corroborated his testimony that he was on a surveillance mission on the aforesated date.^[12]

On July 31, 1995, the trial court issued an Order declaring that the petitioner committed the crime charged while not in the performance of his official function. The trial court added that upon the enactment of R.A. No. 7975,^[13] the issue had become moot and academic. The amendatory law transferred the jurisdiction over the offense charged from the Sandiganbayan to the RTC since the petitioner did not have a salary grade of "27" as provided for in or by Section 4(a)(1), (3) thereof. The trial court nevertheless ordered the prosecution to amend the Information pursuant to the ruling in *Republic v. Asuncion*^[14] and R.A. No. 7975. The amendment consisted in the inclusion therein of an allegation that the offense charged was not committed by the petitioner in the performance of his duties/functions, nor in relation to his office.

The petitioner filed a motion for the reconsideration^[15] of the said order, reiterating that based on his testimony and those of Benjamin Carixio and Roberto Fajardo, the offense charged was committed by him in relation to his official functions. He asserted that the trial court failed to consider the exceptions to the prohibition. He asserted that R.A. No. 7975, which was enacted on March 30, 1995, could not be applied retroactively.^[16]

The petitioner further alleged that Luz Nacario Nueva, the mother of the victim, through counsel, categorically and unequivocally admitted in her complaint filed with the People's Law Enforcement Board (PLEB) that he was on an official mission when the crime was committed.

On November 24, 1995, the RTC made a *volte face* and issued an Order reversing and setting aside its July 31, 1995 Order. It declared that based on the petitioner's evidence, he was on official mission when the shooting occurred. It concluded that the prosecution failed to adduce controverting evidence thereto. It likewise considered Luz Nacario Nueva's admission in her complaint before the PLEB that the petitioner was on official mission when the shooting happened.

The RTC ordered the public prosecutor to file a Re-Amended Information and to allege that the offense charged was committed by the petitioner in the performance of his duties/functions or in relation to his office; and, conformably to R.A. No. 7975, to thereafter transmit the same, as well as the complete records with the stenographic notes, to the Sandiganbayan, to wit:

WHEREFORE, the Order dated July 31, 1995 is hereby SET ASIDE and RECONSIDERED, and it is hereby declared that after preliminary hearing, this Court has found that the offense charged in the Information herein was committed by the accused in his relation to his function and duty as member of the then Philippine Constabulary.

Conformably with R.A. No. 7975 and the ruling of the Supreme Court in *Republic v. Asuncion, et al.*, G.R. No. 180208, March 11, 1994: