

SECOND DIVISION

[G.R. No. 151068, May 21, 2004]

BENITO C. SALAZAR, PETITIONER, VS. HON. TOMAS R. ROMAQUIN, IN HIS CAPACITY AS PRESIDING JUDGE OF BR. 2 OF THE REGIONAL TRIAL COURT OF KALIBO, AKLAN, THE PEOPLE OF THE PHILIPPINES, REPRESENTED BY AKLAN PROVINCIAL PROSECUTOR HON. LOURDES QUIMPO-MAYOR, HEIRS OF RAYMUNDO RODRIGUEZ, AND JODEL B. RENTILLO, RESPONDENTS.

R E S O L U T I O N

CALLEJO, SR., J.:

This is a petition for review of the Resolution^[1] of the Court of Appeals in CA-G.R. SP No. 67252 denying due course and dismissing the petition for certiorari of petitioner Benito Cortez Salazar, on the ground that he served a copy of his petition on the respondent People of the Philippines, through the Provincial Prosecutor, and not through the Office of the Solicitor General; and, the resolution of the appellate court denying the petitioner's motion for reconsideration of the said resolution.

The Antecedents

On May 12, 2001, the Provincial Prosecutor of Aklan filed an Information in the Regional Trial Court of Kalibo, Aklan, charging the petitioner with murder. The accusatory portion reads:

That on or about 8:30 o'clock in the morning of April 26, 2001, in Barangay Dumaguit, Municipality of New Washington, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with treachery and use of superior strength, with intent to kill and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot one RAYMUNDO RODRIGUEZ, hitting the latter on the different parts of his body which caused his instantaneous death. Xeroxed copy of the Post-Mortem Examination is hereto attached as Annex "A" and made an integral part of this information.

By reason of the unlawful acts of the accused, the family of the victim suffered P100,000.00 actual damages.

CONTRARY TO LAW.^[2]

The Provincial Prosecutor recommended no bail in this case, docketed as Criminal Case No. 6002.

Barely three hours after filing the Information, the Provincial Prosecutor filed an Urgent Ex-Parte Motion for Issuance of Warrant of Arrest in the said case alleging, *inter alia*, that:

There is an urgent need for the issuance of Warrant of Arrest against the accused as the lives of some people are in danger considering that the motive is political and with the election day on May 14, 2001, there is an urgent need to protect the public from anymore bloodshed and as wrongly or intentionally design by the accused, if the motive is infidelity, to protect the life of her wife, Noli Marie Salazar, who is residing on the same address in Dumaguít, New Washington, Aklan.^[3]

On May 12, 2001, Executive Judge Sheila Martelino-Cortes issued an Order granting the motion.^[4] On the same day, the trial court issued a warrant for the petitioner's arrest.^[5] However, the petitioner was nowhere to be found, and as such, the police officers failed to serve the warrant on him. The case was later raffled to Branch 2 of the court, presided by Judge Tomas R. Romaquin.

On May 15, 2001, the petitioner received a copy of the Joint Resolution of the Investigating Prosecutor finding probable cause for murder against him which formed the basis for the filing of the Information.

On May 16, 2001, the petitioner filed in the RTC an Urgent Motion to Suspend Proceedings and to Lift Warrant of Arrest. The petitioner alleged, *inter alia*, that he had filed a petition for review of the Joint Resolution of the Investigating Prosecutor finding probable cause for murder against him in the Office of the Secretary of Justice. The petitioner cited Rule 112, Section 4 of the Rules of Court and the ruling of this Court in *Roberts, Jr. vs. Court of Appeals*,^[6] to support his plea for the suspension of the proceedings. To justify his motion for the lifting of the warrant of arrest issued against him, the petitioner alleged, thus:

... He further submits that this motion is in consonance with his constitutional presumption of innocence and will not prejudice anyone. Accused is a person of good moral standing, a member of the bar and an officer of the court, a noted businessman, and had served the Philippine government until April 2001, as President of the Food Terminal, Inc. He is innocent of the charges in this case and has no intention whatsoever to avoid the jurisdiction of the Honorable Court and the proceedings in this case.^[7]

The provincial prosecutor opposed the motion, contending that the filing of a petition for review of the investigating prosecutor's resolution in the Office of the Secretary of Justice was not a justification for the suspension of the enforcement of the warrant of arrest issued by the court. The petitioner, the Provincial Prosecutor averred, cannot rely on the ruling in *Roberts, Jr. vs. Court of Appeals*^[8] because the facts therein are different from those in the case before the court. Moreover, the Provincial Prosecutor averred, the petitioner had not yet been arrested; hence, the court had not yet acquired jurisdiction over his person. The prosecution asserted that the petitioner's filing of a motion for the lifting of the warrant of arrest against him did not constitute a voluntary appearance before the court.

The petitioner filed on May 29, 2001 a supplement to his motion, alleging that since

Executive Judge Martelino-Cortes was the aunt of the wife of the deceased, it was illegal for her to have acted on the provincial prosecutor's motion for the issuance of a warrant of arrest against him, and to thereafter grant the motion and issue the said warrant. Hence, according to the petitioner, the Executive Judge was disqualified to act on the motion, viz:

4. Finally, the Honorable Executive Judge is related within the fifth degree of consanguinity to Vivien Y. Bontogon-Rodriguez, wife of the deceased, Raymundo Rodriguez. Vivien is the daughter of her first cousin Angela Yap-Bontogon, and therefore, a niece of the Honorable Executive Judge. In view of this relationship, the Honorable Executive Judge is disqualified to sit in any case or in any proceedings involving the death of Raymundo Rodriguez. She should have refused to act on Prosecutor Mayor's motion for issuance of the warrants of arrest.^[9]

The provincial prosecutor disagreed with the petitioner and averred in his reply to the supplement to the petition that the petitioner failed to prove the relationship of the Executive Judge to the wife of the deceased. He asserted that the matter of the inhibition of the judge should have been addressed to her, and that even with her disqualification, the warrant of arrest and the order she issued were valid.

On August 10, 2001, Judge Tomas R. Romaquin, who presided over Branch 2 of the court, issued an Order granting the petitioner's motion to suspend the proceedings. However, the petitioner's motion to lift warrant of arrest was denied. The petitioner filed a motion for partial reconsideration of the order, but the court denied the same. The trial court declared that the issues raised by the petitioner had become moot and academic since the Secretary of Justice had denied his petition for review and affirmed the joint resolution of the investigating prosecutor finding probable cause against him.

The petitioner forthwith filed a petition for certiorari in the Court of Appeals on November 5, 2001, assailing the orders of the RTC. However, the petitioner failed to submit proof of service of copies of his petition on the respondent RTC, the People of the Philippines and Jodel Rentillo.

On November 12, 2001, the Court of Appeals issued a Resolution denying due course and dismissing the petition, on the ground that the petitioner failed to show proof of service of the petition on the respondents, as mandated by Rule 46, Section 3 in relation to Rules 65 and 13 of the 1997 Rules of Court, as amended.

On November 20, 2001, the Court of Appeals received a Manifestation and Submission which the petitioner filed through registered mail on November 5, 2001 alleging that, on the latter date, copies of the petition were served on the respondents through registered mail, as evidenced by the affidavit of service executed by Danilo B. Elardo, the messenger in the law office of the petitioner's counsel. The petitioner also filed a motion for reconsideration of the resolution of the Court of Appeals, on the ground that he had substantially complied with the requirements of the Rules of Court, as amended.

On December 13, 2001, the Court of Appeals issued a Resolution denying the said motion, on the ground that the petitioner failed to serve a copy of his petition on the