347 Phil. 791

FIRST DIVISION

[G.R. No. 128369, December 22, 1997]

RODOLFO CAOILI, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND HONORABLE RUSTICO V. PANGANIBAN, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 51, RESPONDENTS.

R E S O L U T I O N

VITUG, J.:

Petitioner Rodolfo Caoili seeks a reconsideration of the Court's 18th June 1997 resolution dismissing his petition for review on *certiorari*. The petition assails the resolution, dated 14 January 1997, of the Court of Appeals finding no grave abuse of discretion on the part of the trial court in refusing to exclude petitioner from a pending criminal case and to correspondingly amend the information theretofore filed with it.

The instant controversy, as well as the antecedent circumstances leading to the petition, could be said to have started when, in an Information filed on 15 March 1995 with the Regional Trial Court ("RTC") of Manila, Branch 51 (Criminal Case No. 95-141750), petitioner, Rodolfo "Rudy" Caoili, was charged, along with a certain Tony Yip, with violation of Presidential Decree ("P.D.") No. 1612. On 24 March 1995, petitioner sought a review by the Secretary of Justice of the resolution, dated 16 February 1995, of Assistant Prosecutor Antonio R. Rebagay that had found a prima facie case against petitioner that served as the basis for the information. In his ruling, dated 18 August 1995, the Secretary of Justice directed the exclusion of petitioner Rodolfo Caoili from the Information. The Secretary opined:

> "The only issue posed in the petition is whether or not there is sufficient evidence to indict Caoili. To be liable for violation of P.D. 1612, Section 2 thereof requires that the offender buys or otherwise acquires and then sells or disposes of any object of value which he knows or should be known to him to have been derived from the proceeds of the crime of robbery or theft. The allegations of Atule and Azuela do not indicate that respondent Caoili acquired the skiving machines in question knowing that the same were stolen property. The prima facie presumption of fencing from possession of stolen property does not apply to Caoili as complainant reacquired the subject skiving machines not from respondent Caoili but from Yip. It is difficult to give credence to the claim of Atule and Azuela that respondent Caoili told them that he purchased the stolen skiving machines which he in turn sold to Yip. It is simply contrary to common human behavior that a person would intimate to another or others an unlawful act, that he purchased stolen items and then dispose of it at a profit. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in

itself such as the common experience and observation of mankind can approve as probable under the circumstances." [1]

In declining to grant the corresponding motion of the prosecutor to exclude petitioner from the information in consonance with the ruling of the Secretary of Justice, the trial court ratiocinated:

"Considering the records of this case and it appearing that the Information was already filed in Court, the determination of the guilt or innocence of the accused is now with this Court and the prosecution may no longer interfere with the judge's disposition of the case.

"The accused has to prove his allegations when his turn to present defense evidence comes because this allegations are matters of defense to be proven in Court.

"It is also noted that the Prosecutor has conducted the necessary preliminary investigation in this case; examined the complaining witnesses; and there is a reasonable ground to believe that the offense charged has been committed and accused are probably guilty thereof. In fact accused Rodolfo Caoili filed his counter-affidavit before the Investigating Prosecutor during the Preliminary Investigation of this case."[2]

Petitioner now insists, following the rebuff by the Court of Appeals, that the determination of a prima facie case of an investigating prosecutor after the examination of declarants and his evaluation of the evidence cannot be considered as attaining finality while still subject to review by the Secretary of Justice who retains the power and authority to either affirm or reverse the findings of subordinate prosecutors. That prerogative, petitioner contends, is all up to the Secretary of Justice to take up so long as the accused has not yet been arraigned. Petitioner concludes that respondent Court of Appeals has erred in affirming the trial court in its questioned order considering that the rule laid down in Crespo vs. Mogul [3]has already been abandoned by the pronouncements in Marcelo vs. Court of Appeals [4] and Roberts, Jr., et al. vs. Court of Appeals, et al. [5]

It is too much of an exaggeration to say that Crespo vs. Mogul no longer holds. The Solicitor General correctly points out that Roberts did not overturn or abandon but simply sustained the authority of the Secretary of Justice, recognized under Rule 112, Section 4, of the Rules of Court, to review resolutions of provincial or city prosecutors or the Chief State Prosecutor upon petition by a proper party even while the criminal case is already pending with the courts. It did, understandably, caution the Secretary of Justice from being indiscriminate on this matter; thus, reiterating Marcelo, the Court has said:

"Nothing in the said ruling forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases. The Secretary of Justice is only enjoined to refrain as far as practicable from entertaining a petition for review or appeal from the action of the prosecutor once a complaint or information is filed in court. In any case, the grant of a motion to dismiss, which the prosecution may