

SIXTEENTH DIVISION

[CA-G.R. SP NO. 86210, August 14, 2006]

HEIRS OF THE LATE NESTOR TRIA, PETITIONERS, VS. OFFICE OF THE PRESIDENT AND ATTY. EPIFANIA OBIAS, RESPONDENTS.

D E C I S I O N

DIMARANAN-VIDAL, J.:

This is a *Petition for mandamus/ certiorari*^[1] under Rule 65 of the 1997 Rules on Civil Procedure seeking to annul, reverse and set aside the Orders dated 24 March 2004^[2] and 10 June 2004^[3] of the public respondent, OFFICE OF THE PRESIDENT (hereinafter public Respondent), through then Presidential Assistant, MANUEL DOMINGO, dismissing the criminal case against private respondent, ATTY. EPIFANIA OBIAS (hereinafter private Respondent).

THE FACTS

As synthesized by the OFFICE OF THE SOLICITOR GENERAL (OSG):

"On May 22, 1998, about 10:00 in the morning, private respondent met Engineer Nestor Tria, Regional Director of the Department of Public Works and Highways(DPWH), Regional Office No. V, at the Pili Airport in Camarines Sur. Engineer Tria then held private respondent by the arm and led her to a particular spot at the airport where they talked. Suddenly, a gunshot rang out. Engineer Tria slumped to the floor bleeding profusely from a gunshot wound at the back of his head eventually resulting in his death.

The National Bureau of Investigation (NBI) conducted an investigation of the incident, the result of which points to Juanito S. Ona as the gunman and Roberto G. Aclan as a cohort:

As a commotion ensued, ONA was seen running down the stairway while tucking a gun on his waistline. Even before Ona could come out of the doorway, ACLAN was already outside the building, pointing a handgun at everybody-obviously to discourage any attempt of pursuit while swiftly stepping backward to where their motorcycle parked. He then fired shots at an army man who tried to chase ONA. The army man, who was then unarmed, sought cover behind a parked van. ACLAN and ONA then boarded a red motorcycle and sped away. Director TRIA died from a lone gunshot wound on his

nape at the Mother Seton Hospital in Naga City the following day.

Accordingly, Atty. Alejandro R. Tenerife, Bicol Regional Director of the NBI, recommended the indictment for murder of Ona, Aclan and private respondent to the Provincial Prosecutor of Camarines Sur.

After conducting the preliminary investigation, Josefino A. Subia and Cietolindo A. Luyun, Acting Provincial Prosecutor and Assisting Provincial Prosecutor, respectively, of CAMARINES Sur, rendered a Resolution dated 2 July 1999 for the indictment of Roberto A. Aclan and Juanito S. Ona but dismissing the case against private respondent for insufficiency of evidence:

WHEREFORE, let an information for murder be filed against respondents ROBERTO "OBET" ACLAN Y GULPO and JUANITO "TOTOY" ONA Y MASALONGA, as defined and penalized under Article 248 of the Revised Penal Code. With respect to respondent ATTY. EPIFANIA "FANNY" G. OBIAS, the case against her is hereby dismissed for insufficiency of evidence.

Petitioners heirs of Nestor Tria appealed from the above resolution to the DOJ. Aclan also filed a "Petition for Review and/or Appeal" with the DOJ. After the submission of the parties' respective pleadings, the DOJ issued its Resolution dated 25 January 2000 the dispositive portion of which reads:

WHEREFORE, the assailed Resolution is MODIFIED. The Acting Provincial Prosecutor and Assistant Provincial Prosecutor of Camarines Sur are hereby directed to include as accused Atty. Epifania Obias in the information for murder filed against Roberto Aclan and Juanito Ona in relation to the killing of Engineer Nestor Tria.

Private respondent and Aclan jointly filed a Motion for Reconsideration (with urgent Prayer to Suspend Filing of Amended Information) dated 14 February 2000 with the DOJ. However, the DOJ denied the same as well as Aclan's Supplemental Motion for Reconsideration dated 15 February 2000 in its Resolution dated 17 September 2001.

Private respondent next elevated the case to the office of the President through the a Notice of Appeal dated 1 October 2001 filed with the DOJ. The Office of the President then required the parties to submit their respective pleadings and directed the DOJ to forward to it the record of this case. Accordingly, the DOJ sent a letter dated 11 January 2002 to the Office of the Provincial Prosecutor of Camarines Sur directing the latter to forward the required record to the Office of the President.

Thereafter, the Office of the President issued its Resolution dated 27 June 2003 dismissing private respondent's appeal. Undaunted, private respondent moved for a reconsideration thereof. She also submitted her "Supplemental Pleading and Submission of Newly Discovered Evidence" dated 20 November 2003.

The Office of the President granted private respondent's motion for reconsideration in its assailed Order dated 24 March 2004; hence, petitioners, in turn, filed with the the Office of the President their Motion for Reconsideration dated 26 April 2004. Unswayed, the Office of the President rendered its assailed Order dated 10 June 2004 denying petitioner's motion for reconsideration."^[4]

The decretal portion of the assailed Order on 24 March 2004 reads:

"WHEREFORE, premises considered, the motion for reconsideration of respondent-appellant Atty. Epifania Obias is hereby GRANTED. The Resolutions of the DOJ dated January 25, 2000 and September 17, 2001 are hereby REVERSED and SET ASIDE. Accordingly, the case against respondent-appellant Obias is hereby dismissed for insufficiency of evidence.

SO ORDERED."

^[5]

The subsequent Motion for Reconsideration filed by the Petitioners was denied per Order dated 10 June 2004 of the Public Respondent, the fallo thereof states:

"WHEREFORE, premises considered, the motion for reconsideration is hereby DENIED.

SO ORDERED."

^[6]

Unsatisfied with the Orders of the public Respondent, the Petitioners come now to this Court attributing upon the public Respondent the following assigned errors:

A.

IN DECIDING THE INSTANT CASE ON THE MERITS AS IT DID IN THE ASSAILED ORDERS DATED MARCH 24, 2004 AND JUNE 10, 2004, THE OFFICE OF THE PRESIDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, AS IT WENT DIRECTLY AGAINST THE LETTER AND SPIRIT OF MEMORANDUM CIRCULAR NO. 1266 DATED NOVEMBER 4, 1983 AND MEMORANDUM CIRCULAR NO. 58 DATED JUNE 30, 1993[;]

B.

IN GIVING WEIGHT AND CREDENCE TO THE ALLEGED SWORN STATEMENTS OF FELIX CALAYAG AND JENNIS NIDEA, AND IN CONSIDERING THE FINDINGS OF THE DEPARTMENT OF JUSTICE DOUBTFUL, THE OFFICE OF THE PRESIDENT GRAVELY ABUSED