

## FIRST DIVISION

[ G.R. No. 207040, July 04, 2018 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. SHELDON ALCANTARA Y LI, JUNNELYN ILLO Y YAN, NATIVIDAD ZULUETA Y YALDUA, MA. REYNA OCAMPO Y CRUZ, MAILA TO Y MOVILLON, MA. VICTORIA GONZALES Y DEDIOS, ELENA PASCUAL Y ROQUE, MARY ANGELIN ROMERO Y BISNAR AND NOEMI VILLEGAS Y BATHAN, RESPONDENTS.**

### DECISION

**TIJAM, J.:**

Before us is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by the People of the Philippines, through the Office of the Solicitor General (OSG), assailing the Decision<sup>[2]</sup> dated April 26, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123672 dismissing the Petition for *Certiorari* filed by the OSG, which affirmed the Order dated October 20, 2011 of the Regional Trial Court (RTC) of Makati City, Branch 145, in Criminal Case No. 11-2408.

#### The Antecedent Facts

On September 20, 2011, the members of the Criminal Investigation and Detection Group-Women and Children Protection Division (CIDG-WCPD) received information that Pharaoh KTV and Entertainment Centre (Pharaoh), a KTV bar, was being used as a front for sexual exploitation, wherein young students were being employed as entertainers. An ABS-CBN News program called "XXX" recorded the same by means of a hidden camera used by their asset. As such, the CIDG-WCPD conducted a series of surveillance operations.<sup>[3]</sup>

On September 20, 2011, the members of CIDG-WCPD, with Senior Police Officer 3 Leopoldo Platilla (SPO3 Platilla) acting as the poseur-customer, went inside Pharaoh together with four other members of the entrapment team. The other team members remained outside the establishment in order to cordon off the area and act as the raiding team.<sup>[4]</sup>

Once inside, SPO3 Platilla and his four companions were met by Winchel Alega y Aganan (Aganan), the receptionist. Aganan led them to the 3rd floor, where they were met by the floor manager, Junnelyn Illo (Illo). Illo accompanied SPO3 Platilla to the aquarium room with a huge one-way mirror where women, dressed in cocktail dresses, were displayed. SPO3 Platilla and his companions selected their respective partners. The team then paid P5,000.00 per hour for the rent of the VIP room and P10,400.00 for each woman. The said amount allegedly entitled them to avail of "extra services" in the form of sexual intercourse with their respective selected partners. The team then proceeded to a VIP room.<sup>[5]</sup>

Upon reaching the VIP room, SPO3 Platilla asked Illo if there were available rooms where they can avail the "extra services." Illo replied that the hotel rooms at the 2nd floor of the building were available. Thereafter, their selected partners arrived, still dressed in cocktail dresses, but allegedly without any underwears.<sup>[6]</sup>

SPO3 Platilla texted the overall ground commander to proceed with the raid. During the raid, Illo, Sheldon Alcantara y Li, Natividad Zulueta y Yaldua, Ma. Reyna Ocampo y Cruz, Maila Toy Movillon, Ma. Victoria Gonzales y De Dios, Elena Pascual y Roque, Mary Angelin Romero y Bisnar and Noemi Villegas y Bathan (collectively, the respondents), who were floor managers, were arrested.<sup>[7]</sup>

Among the women rescued by the CIDG-WCPD were Ailyn Almoroto Regacion, Jocelyn Toralba Melano, Hazelyn Jane Dela Cruz Isidro, and Garian Delas Penas Edayan<sup>[8]</sup> (complainants), who executed a *Sinumpaang Salaysay*. In their *Sinumpaang Salaysay*, complainants alleged that the VIP room contains a karaoke and sofa. They claimed that they only serve guests inside the VIP room, sing and/or eat with them. Some guests tried to touch parts of their body but they claimed that "ito'y pinipilit na maiwasan at mapigilan."<sup>[9]</sup> However, during the preliminary investigation, complainants withdrew their *Sinumpaang Salaysay*, and claimed that "they never wanted to execute any statement and that they do not want to put their co-employees and friends from Pharaoh in trouble."<sup>[10]</sup>

Respondents, on the other hand, denied that Pharaoh was being used as a front for prostitution and sexual exploitation. They further claimed that the complainants and other Customer Liaison Entertainment Officers (CLEOs) were never recruited since they came voluntarily to Pharaoh.<sup>[11]</sup>

On October 4, 2011, a Resolution<sup>[12]</sup> was issued by the Assistant State Prosecutor and Prosecution Attorney of the Department of Justice (DOJ) finding probable cause for charging respondents with violation of Section 4(a) and (e),<sup>[13]</sup> in relation to Section 6(c)<sup>[14]</sup> of Republic Act (R.A.) No. 9208,<sup>[15]</sup> also known as the Anti-Trafficking in Persons Act of 2003. As such, an Information<sup>[16]</sup> charging the respondents with qualified trafficking of persons was filed in court.

Respondents filed an Urgent Motion for Judicial Determination of Probable Cause<sup>[17]</sup> before the RTC of Makati City, Branch 145 presided by Judge Carlito B. Calpatura (Judge Calpatura).

On October 20, 2011, the RTC issued its Order finding no probable cause for the indictment of the respondents, thus:

WHEREFORE, for lack of probable cause, the information in this case filed against all the [respondents]:

SHELDON ALCANTARA y LI,  
JUNNELYN ILLO y YAN,  
NATIVIDAD ZULUETA y YALDUA,  
MA. REYNA OCAMPO y CRUZ,  
MAILA TO y MOVILLON,

MA. VICTORIA GONZALES y DE DIOS,  
ELENA PASCUAL y ROQUE,  
MARY ANGELIN ROMERO y BISNAR and  
NOEMI VILLEGAS y BATHAN

is ordered DISMISSED. The [respondents] are ordered released from custody unless they or any of them are detained for some other legal cause or causes.

SO ORDERED.<sup>[18]</sup>

In issuing the assailed order, the RTC reasoned as follows:

The court has closely examined the evidence and found that no factual bases sufficient to support the existence of probable cause of the acts being charged. To illustrate, there is no evidence that the named women were vulnerable for recruitment, hiring, or to be received or maintained as CLEO for purposes of prostitution or pornography. On the contrary, all the said women were in unison in claiming that they were not recruited by the [respondents] or any of the officers or authorized agents of Pharaoh KTV. It is also their claim that they applied with Pharaoh KTV at their own free will and volition. No evidence appears on record to contradict their claim.

On the aspect of pornography as an ingredient of the offense charged, there is nothing in the "Affidavit of Arrest" of the arresting officers nor in the affidavits of the witnesses for the state which would suggest acts of pornography as defined under Sec. 3(h) of R.A. [No.] 9208. x x x

On the aspect of prostitution, Sec. 3-c of the same law defines the same as referring to 'any act, transaction, scheme or design involving the use of person by another, for sexual intercourse or lascivious conduct in exchange of money, profit or any other consideration. x x x

Again, going over the affidavits of the arresting officers, and the supposed victims, there is nothing which would indicate that there was sexual intercourse or lascivious conduct being actually performed or about to be performed when the raid took place. x x x

x x x x

Lastly, there is also no evidence of the alleged payment of money for the alleged "extra service". In entrapment, it is the normal procedure which can be taken judicial notices of by judges by reason of judicial function, that the money should be properly marked, recorded in the logbook of the operatives, dusted in chemical to make it sure it will be identifiable as to who received it. This procedure will ensure the integrity of the money as object evidence. This was also not done.<sup>[19]</sup>

Aggrieved, the OSG filed a Petition for *Certiorari* before the CA alleging that Judge Calpatura gravely abused his discretion in taking cognizance of the motion to determine probable cause as the same is an executive function that belongs to the

prosecutor. Further, the OSG alleged that Judge Calpatura gravely abused his discretion when it found that no probable cause exists for the filing of charges against respondents.

On April 26, 2013, the CA rendered the Decision<sup>[20]</sup> dismissing the Petition for *Certiorari* and affirming the RTC's ruling that no probable exist to charge the respondents.

Hence, this petition.

### **Arguments of the OSG**

The OSG claimed that the determination of probable cause to hold a person for trial is a function that belongs to the public prosecutor. The correctness of the existence of which is a matter that the trial court cannot pass upon.<sup>[21]</sup> If there was palpable error or grave abuse of discretion in the public prosecutor's finding of probable cause, the remedy should be to appeal such finding to the Secretary of Justice. In this case, the Information has already been filed with the court and instead of appealing the resolution of the prosecutor, the respondents opted to file a motion for judicial determination of probable cause.<sup>[22]</sup>

### **Issues**

Ultimately, the issues to be resolved are: 1) whether Judge Calpatura can determine the existence of probable cause; and 2) whether Judge Calpatura was correct in ordering the dismissal of the case for lack of probable cause.

### **Ruling of the Court**

#### **Judge Calpatura can personally determine the existence of probable cause for the purpose of issuing a warrant of arrest**

Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure provides that:

**Sec. 6. When warrant of arrest may issue.** - (a) *By the Regional Trial Court.* - Within ten (10) days from the filing of the complaint or information, **the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.** If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

The fact that Judge Calpatura has jurisdiction to determine probable cause for the purpose of issuing a warrant of arrest has long been settled. In the recent case of *Liza L. Maza, et al. v. Hon. Evelyn A. Turla, et al.*,<sup>[23]</sup> this Court reiterated that: