

SECOND DIVISION

[G.R. No. 217508, April 18, 2016]

JOSEPH SCOTT PEMBERTON, PETITIONER, VS. HON. LEILA M. DE LIMA, IN HER CAPACITY AS THE SECRETARY OF JUSTICE, JUDGE ROLINE GINEZ- JABALDE, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 74 OF THE REGIONAL TRIAL COURT OF OLONGAPO CITY, AND MARILOU LAUDE Y SERDONCILLO, RESPONDENTS.

DECISION

LEONEN, J.:

This resolves a Petition for Certiorari^[1] praying that the Resolutions dated January 27, 2015^[2] and February 20, 2015^[3] of respondent Secretary of Justice Leila M. De Lima (Secretary De Lima) in I.S. No. III-10-INV-14J-01102^[4] be reversed and set aside.^[5]

A complaint for murder was filed by the Philippine National Police-Olongapo City Police Office and private respondent Marilou Laude y Serdoncillo (Laude) against petitioner Joseph Scott Pemberton (Pemberton).^[6]

On October 17, 2014, Pemberton received a Subpoena^[7] issued by the City Prosecutor of Olongapo City giving him 10 days from receipt within which to file a counter-affidavit.^[8] Laude filed an Omnibus Motion^[9] dated October 21, 2014 praying that the City Prosecutor of Olongapo City issue subpoenas addressed to: (a) "Pemberton, directing him to present himself for the lifting of his fingerprint and of buccal swabs during the clarificatory hearing set on [November 5,] 2014;"^[10] and (b) the Philippine National Police Crime Laboratory, directing the Chief of Office to assign forensic personnel to gather fingerprints and buccal swabs from Pemberton and subject him to "forensic examination and analysis, including DNA testing."^[11] Pemberton opposed this in his Opposition to the Omnibus Motion dated 21 October 2014^[12] dated October 27, 2014.^[13] He also filed a Manifestation and Omnibus Motion: (1) For Clarification; (2) To Declare Absence of Probable Cause for Murder or Any Other Crime Against [Petitioner]; and (3) By Way of Ad Cautela [sic] Prayer, in the Event that this Honorable Office does not Declare the Absence of Probable Cause, at the very least, To Reduce the Charge to Homicide Considering the Lack of Circumstances Qualifying the Offense to Murder^[14] dated October 27, 2014.^[15]

During the preliminary investigation on October 27, 2014, the City Prosecutor of Olongapo City stated that Pemberton's right to file a counter-affidavit was deemed waived.^[16] In the Order dated October 29, 2014, the City Prosecutor directed the Philippine National Police Crime Laboratory to obtain latent fingerprint and buccal swabs from Pemberton and "to submit . . . the results of the forensic examination

within a period of three (3) weeks . . . from the date of actual collection of the specimen[s.]"^[17]

Pemberton filed a Manifestation with Omnibus Motion: 1) to Determine Probable Cause on the Basis of Evidence Submitted as of 27 October 2014; and 2) For Reconsideration of the Order dated 29 October 2014^[18] dated November 4, 2014.^[19]

However, the City Prosecutor of Olongapo City continued to evaluate the evidence and conducted ocular inspections in connection with the preliminary investigation.^[20] Through the Resolution dated December 15, 2014, it "found probable cause against [Pemberton] for the crime of murder."^[21] On the same day, an Information^[22] for murder was filed against Pemberton before the Regional Trial Court of Olongapo City.^[23] The case was docketed as Criminal Case No. 865-2014 and was raffled to Branch 74 of the Regional Trial Court.^[24] The trial court issued a warrant of arrest.^[25]

On December 18, 2014, Pemberton filed his Petition for Review before the Department of Justice.^[26] On the same day, he filed a Motion to Defer the Proceedings^[27] before the Regional Trial Court.^[28]

In the Resolution dated January 27, 2015, Secretary De Lima denied Pemberton's Petition for Review^[29] and stated that based on the evidence on record, there was "no reason to alter, modify, or reverse the resolution of the City Prosecutor of Olongapo City."^[30] Pemberton's Motion for Reconsideration was likewise denied for lack of merit in the Resolution dated February 20, 2015.^[31]

Aggrieved, Pemberton filed this Petition for Certiorari with application for the ex-parte issuance of a temporary restraining order and/or writ of preliminary injunction.^[32]

Pemberton argues that in sustaining a finding of probable cause, Secretary De Lima committed grave abuse of discretion amounting to excess or absence of jurisdiction based on the following grounds: (a) Secretary De Lima took into account additional evidence which the City Prosecutor allegedly had no authority to receive and which Pemberton had no opportunity to address and rebut, thereby denying him due process of law;^[33] (b) Secretary De Lima found probable cause to charge Pemberton with the crime of murder when "the evidence on record does not support the existence of probable cause to indict [him] . . . with either homicide or murder[;]"^[34] and (c) Secretary De Lima found that "the killing was attended with the qualifying circumstances of treachery, abuse of superior strength[,], and cruelty despite prevailing jurisprudence dictating that the elements of these qualifying circumstances . . . be established by direct evidence."^[35]

Secretary De Lima, through the Office of the Solicitor General, points out that this Petition is procedurally infirm. The Petition assails the appreciation of evidence and law by Secretary De Lima, which are "errors of judgment . . . [that] cannot be remedied by a writ of *certiorari*."^[36] Further, by filing this Petition before this court

and not the Court of Appeals, Pemberton violated the principle of hierarchy of courts.^[37] Moreover, the case is moot and academic, considering that the Regional Trial Court has convicted Pemberton for the crime charged.^[38]

Thus, for resolution are the following issues:

First, whether respondent Secretary Leila M. De Lima committed grave abuse of discretion in sustaining the finding of probable cause against petitioner Joseph Scott Pemberton, thereby denying petitioner due process of law;

Second, whether petitioner violated the principle of hierarchy of courts by filing his Petition before this Court instead of the Court of Appeals; and

Lastly, whether this case has been rendered moot and academic.

We deny the Petition for Certiorari for lack of merit and for being moot and academic.

I

In *Alafriz v. Nable*,^[39] this Court defined grave abuse of discretion:

Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. "Without jurisdiction" means that the court acted with absolute want of jurisdiction. There is "excess of jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[40] (Citations omitted)

In *Ching v. Secretary of Justice*,^[41] this Court expounded on the evidence required for a determination of probable cause:

Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon probable cause of reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed by the suspect.^[42]

This was reiterated in *Chan v. Secretary of Justice*:^[43]

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of

guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.^[44]

There is no basis to doubt that respondent De Lima judiciously scrutinized the evidence on record. Based on respondent De Lima's assessment, there was ample evidence submitted to establish probable cause that petitioner murdered the victim:

First, the killing of Laude has been indubitably confirmed.

Second, the various pieces of evidence so far presented in this case, *i.e.*, the CCTV footage of Ambyanz showing Gelviro, Laude and respondent leaving the club together; the unequivocal testimonies of Gelviro and Gallamos positively identifying respondent as the person who was last seen with Laude on the night he died; the result of the general physical examination conducted on respondent showing abrasions and light scratches on different parts of his body; his latent print on one of the condoms found at the crime scene; and the unequivocal testimonies of respondent's fellow Marine servicemen who were with him on that fateful night, lead to no other conclusion than that respondent was the perpetrator of the crime.

Third, the results of the physical examination conducted on respondent and Laude's cadaver, as well as the ocular inspection of the crime scene, demonstrate the attendant qualifying circumstances of treachery, abuse of superior strength, and cruelty.

Finally, the killing is neither parricide nor infanticide as provided under the RPC, as amended. Hence, the charge of murder.

The convergence of the foregoing circumstances all taken together leads to the fair and reasonable inference that respondent is probably guilty of killing Laude through treachery, abuse of superior strength, and cruelty.

Maintaining his innocence, respondent points out the lack of any direct evidence linking him to the crime. We are not persuaded.

Absence of direct evidence does not preclude a finding of probable cause. It has been the consistent pronouncement of the Supreme Court that, in such cases, the prosecution may resort to circumstantial evidence. Crimes are usually committed in secret and under conditions where concealment is highly probable. If direct evidence is insisted upon under all circumstances, the guilt of vicious felons who committed heinous crimes in secret or in secluded places will be hard, if not impossible, to prove.

In view of the importance of the qualifying circumstances as the bases for respondent's indictment for the crime of murder, the same are heretofore discussed and explained.

There is treachery when these two elements occur: (1) the employment of means of execution that give the persons attacked no opportunity to

defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.

Treachery clearly attended the killing of Laude. The evidence reveals that respondent choked him from behind. The autopsy results as well as the examination conducted by the NCIS indicate that there were visible pressure marks and a circular purplish discoloration around his neck. In addition, the Medico Legal Report No. A14-163RCLO5 shows that the external portion of the right horn of his larynx is contused and that there is hematoma on the upper inner portions of the larynx below the glottis. It is apparent that the manner of attack employed by respondent rendered Laude unable to defend himself or to retaliate.

It has been repeatedly held that the essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. We note that the short span of time it took to kill Laude indicates the suddenness of the attack. According to the separate testimonies of certain witnesses, the lifeless body of Laude was discovered thirty (30) minutes after Gelviro left the room.

Moreover, the absence of provocation on the part of Laude to warrant such vicious attack need not be debated. He went with respondent on his own volition to engage in sexual acts in exchange for money. Thus, he most probably did not expect to be in danger and, consequently, he was unlikely unable to defend himself against the unwarranted attack.

In appreciating the element of abuse of superior strength, it is not only necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is also necessary to analyse the incidents and episodes constituting the total development of the event. We aptly note that respondent is a member of [the] United States Marine Corps, which is known to have the strictest recruitment standards among the Uniformed Services of the United States Armed Forces. In view of the rigorous physical and mental training requirements for enlistment, all members of the Marine Corps possess superior strength and exceptional combat skills. On the other hand, Laude, albeit biologically a man, is a transgender who chose to adapt (sic) a woman's physical appearance and behavior. Thus, it is clear that there is manifest physical disparity between respondent and Laude and that the former took advantage of his superior strength to cause the death of Laude, as evidenced by the multiple abrasions and contusions found on the latter.

On the other hand, there is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act. The test is whether respondent deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse. The autopsy results that Laude died of "asphyxia due to drowning