

SECOND DIVISION

[G.R. No. 189596, April 23, 2014]

**DEPARTMENT OF JUSTICE, PETITIONER, VS. TEODULO NANO
ALAON, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

We are urged in this Petition for Review on *Certiorari* to reverse the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 103816 dated 25 March 2009, which annulled and set aside the Resolution^[2] dated 18 March 2008 of petitioner Department of Justice (DOJ) in I.S. No. 2002-10728. The assailed Resolution: (1) set aside the Supplemental Resolution dated 16 December 2002 of the Provincial Prosecutor of Camarines Norte; and (2) directed the filing of the corresponding Information for three (3) counts of rape against respondent Teodulo Nano Alaon (Alaon).

The fairly simple facts follow.

Private complainant AAA^[3] filed a complaint against Alaon charging him with the crime of rape occurring on three separate but successive occasions. The first incident transpired sometime in October 2000, while she was picking guavas that had fallen from trees at a construction site beside Alaon's house in Sta. Elena, Camarines Norte. Alaon pulled AAA towards a guava tree; removed her shorts and underwear and simultaneously undressed himself; laid her on a bench and forcibly inserted his penis into her vagina.

Alaon denied the charges: AAA's family merely fabricated the charge in retaliation to their eviction from the land which Alaon owned.

The Provincial Prosecution Office of Daet, Camarines Norte found probable cause to indict Alaon for three (3) counts of rape under Article 266-A of the Revised Penal Code in relation to Republic Act No. 7610, The Special Protection of Children Against Abuse, Exploitation and Discrimination Act, docketed as I.S. No. 2002-10728.

Acting favorably on Alaon's Motion for Reconsideration, the Provincial Prosecutor downgraded the offense from *rape* to *acts of lasciviousness*, ratiocinating, thus:

Going over the arguments presented in this case despite absence of comment from the complainant, we posit (sic) that these grounds raised in said motion are all evidentiary in character except as to the alleged physical impossibility on the part of the accused to commit the crime as charged which merits further scrutiny. Guided by the decision in *US v. Tan x x x* and *People v. Domondon x x x*, "thus, a man who threw a girl

7-10 years old upon the floor, placed his private parts upon or over hers, and remained in that position or made motions of sexual intercourse, is guilty of acts of lasciviousness," undersigned was constrained to reconsider the assailed resolution considering the undisputed state of the accused who at the time of the alleged commission is 73 years old.

WHEREFORE, considering the aforementioned and the absence of any other incriminating evidence other than the passing statement of the victim, it is imperative to modify our assailed resolution from rape to acts of lasciviousness which best suits (sic) the evidence at hand.

Let an Information for Acts of Lasciviousness be filed against accused recommending the amount of P12,000.00 for his provisional liberty.^[4]

Consequently, an Information against Alaon was filed before the Regional Trial Court (RTC), Branch 64, Labo, Camarines Norte, docketed as Criminal Case No. 03-1021:

That in the afternoon of October, 2002 at Purok 2, Barangay Poblacion, Sta. Elena, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously commit an [sic] acts of lasciviousness upon the person of AAA, 17 years old, against her will and to her damage.^[5]

On 28 January 2003, then Secretary of Justice Simeon Datumanong (Secretary of Justice), directed the Provincial Prosecutor of Camarines Norte to: (1) forward the entire records of the case for automatic review, citing "the interest of justice and pursuant to the residual authority of the Secretary of Justice of supervision and control over the prosecutors of the Department of Justice;" and (2) defer the filing of the Information for acts of lasciviousness against Alaon, or, in the event an Information has been filed in court, move for suspension of proceedings against Alaon, "in order not to render the automatic review moot and academic."

The Secretary of Justice's directive was based on a letter of BBB, AAA's mother, narrating what happened to AAA who is said to be suffering from an intellectual disability.^[6]

Forthwith, on 11 February 2003, the 3rd Assistant Provincial Prosecutor, Carmel Josa Auro Estrellado (Prosecutor Estrellado), sent a letter to Presiding Judge Leo Intia (Judge Intia) requesting the withdrawal of the Information for Acts of Lasciviousness in compliance with Secretary Simeon Datumanong's directive mistakenly assuming that Alaon filed a petition for review before the Secretary of Justice.

On that same day, Judge Intia, for the issuance of a warrant of arrest, separately found probable cause for the crime of Acts of Lasciviousness against Alaon. However, Judge Intia took into consideration the contents of Prosecutor Estrellado's letter and held in abeyance the issuance of the warrant of arrest pending the resolution of the petition for review. Judge Intia likewise directed Prosecutor

Estrellado to submit a copy of the petition for review before the trial court.

The next day, 12 February 2003, the RTC acting on the letter of Prosecutor Estrellado, suspended the proceedings in Criminal Case No. 03-1021 in accordance with Section 11, Rule 116 of the Rules of Court.

On 26 February 2003, Prosecutor Estrellado filed an Explanation/Manifestation clarifying that:

x x x x

2. The undersigned erred in concluding that a petition for review was filed by the accused as indeed, the accused never did;
3. The undersigned realized such honest mistake only when the mother of the victim in this case appeared before her on 24 February 2003 as it was at this time that she was informed that there actually was no formal petition for review filed by said complainant. According to her, she simply asked for the assistance of the Department of Justice Central Office to review the Supplemental Resolution of the Provincial Prosecutor in modifying the previous resolution issued thereon and in changing the designation of the offense from Rape to Acts of Lasciviousness.^[7]

Alarmed, Alaon filed a Manifestation with Urgent Motion to Set Case for Arraignment with a prayer to lift the RTC's suspension of proceedings and to immediately set the case for arraignment in accordance with an accused's right to speedy trial.

The RTC issued an Order: (1) granting Alaon's motion and setting the case for arraignment; and (2) confirming the earlier finding of judicial probable cause against Alaon for the crime of Acts of Lasciviousness.

During arraignment on 11 June 2003, Alaon entered a plea of not guilty.

Apparently confused, Prosecutor Estrellado, on the following day, 12 June 2003, filed a motion to withdraw appearance, insisting that the case remained pending review by the Secretary of Justice and as such, has been directed to withdraw appearance from the case.

On 25 June 2003, the RTC issued an Order denying Prosecutor Estrellado's motion:

The grounds relied upon by the 3rd Assistant Provincial Prosecutor Carmel Josa Estrellado is not a valid ground for withdrawing her appearance as Public Prosecutor in this case. If it is true that there is a pending petition for review filed with the Department of Justice, suspension of the proceedings of this case is the proper recourse in accordance with Sec. 11, Rule 117 of the Revised Rules of Criminal Procedure, not withdrawal of appearance. x x x The withdrawal of appearance by Assistant Prosecutor Carmel Josa Estrellado upon the directive of the Provincial Prosecutor is tantamount to dereliction of duty

which this court shall not allow.

WHEREFORE, the Motion to Withdraw Appearance is hereby DENIED.

Furnish copy of this order also to the Secretary of Justice, Hon. Simeon A. Datumanong.^[8]

Taking cue from the RTC's latest Order, Prosecutor Estrellado filed a Motion to Suspend Proceedings which Alaon opposed.

On 31 July 2003, the RTC issued an Order denying the Motion to Suspend Proceedings, ruling that the grounds for suspension listed in Section 11, Rule 116 of the Rules of Court are wanting. The RTC likewise set pre-trial of the case on 27 August 2003.

Trial of the case ensued.

On 18 March 2008, with the propriety of the offense charged still at issue within the prosecution, specifically the DOJ, then Undersecretary of the DOJ, Ernesto Pineda, issued the previously adverted to Resolution, setting aside the downgrading of the crime charged against Alaon from rape to acts of lasciviousness. The DOJ reinstated the previous charge of rape against Alaon and directed the filing of an Information against him for three (3) counts of rape in relation to Republic Act No. 7610.

Alaon thus filed a petition for *certiorari* before the Court of Appeals assailing the Resolution of the DOJ for being issued in grave abuse of discretion.

On 25 March 2009, the appellate court granted Alaon's petition and annulled the Resolution of the DOJ, finding grave abuse of discretion in its issuance. The Court of Appeals ratiocinated that while the Secretary of Justice had the power to review resolutions or decision of provincial or city prosecutors or the Chief State Prosecutor, review must be done within the parameters set forth in the 2000 National Prosecution Service Rules on Appeal.^[9] For the Court of Appeals, BBB's letter clearly did not comply with the requirements for taking an appeal by way of petition for review from the prosecutor's resolution of a criminal case at the preliminary investigation stage. More importantly, the accused, Alaon, in this case, was "deprived of his right to procedural due process, as he was not given the opportunity to be heard by filing a comment or opposition thereto." Ultimately, the Court of Appeals held that "in treating the letter-request as an appeal from the Provincial Prosecutor's Supplemental Resolution, and in issuing the assailed Resolution directing the filing of the corresponding information for three (3) counts of rape against [Alaon] on the basis thereof, the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction."

Hence, this petition for review on *certiorari*.

The DOJ ascribes grave error in the appellate court's decision and posits that: