

THIRD DIVISION

[G.R. No. 182677, August 03, 2010]

JOSE ANTONIO C. LEVISTE, PETITIONER, VS. HON. ELMO M. ALAMEDA, HON. RAUL M. GONZALEZ, HON. EMMANUEL Y. VELASCO, HEIRS OF THE LATE RAFAEL DE LAS ALAS, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Jose Antonio C. Leviste (petitioner) assails via the present petition for review filed on May 30, 2008 the August 30, 2007 Decision^[1] and the April 18, 2008 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 97761 that affirmed the trial court's Orders of January 24, 31, February 7, 8, all in 2007, and denied the motion for reconsideration, respectively.

Petitioner was, by Information^[3] of January 16, 2007, charged with *homicide* for the death of Rafael de las Alas on January 12, 2007 before the Regional Trial Court (RTC) of Makati City. Branch 150 to which the case was raffled, presided by Judge Elmo Alameda, forthwith issued a commitment order^[4] against petitioner who was placed under police custody while confined at the Makati Medical Center.^[5]

After petitioner posted a P40,000 cash bond which the trial court approved,^[6] he was released from detention, and his arraignment was set on January 24, 2007.

The private complainants-heirs of De las Alas filed, with the conformity of the public prosecutor, an Urgent Omnibus Motion^[7] praying, *inter alia*, for the deferment of the proceedings to allow the public prosecutor to re-examine the evidence on record or to conduct a reinvestigation to determine the proper offense.

The RTC thereafter issued the (1) Order of January 24, 2007^[8] deferring petitioner's arraignment and allowing the prosecution to conduct a reinvestigation to determine the proper offense and submit a recommendation within 30 days from its inception, *inter alia*; and (2) Order of January 31, 2007^[9] denying reconsideration of the first order. Petitioner assailed these orders via certiorari and prohibition before the Court of Appeals.

Meantime, petitioner filed an Urgent *Ex-Parte* Manifestation and Motion before the trial court to defer acting on the public prosecutor's recommendation on the proper offense until after the appellate court resolves his application for injunctive reliefs, or alternatively, to grant him time to comment on the prosecutor's recommendation and thereafter set a hearing for the judicial determination of probable cause.^[10] Petitioner also separately moved for the inhibition of Judge Alameda with prayer to

defer action on the admission of the Amended Information.^[11]

The trial court nonetheless issued the other assailed orders, viz: (1) Order of February 7, 2007^[12] that admitted the Amended Information^[13] for *murder* and directed the issuance of a warrant of arrest; and (2) Order of February 8, 2007^[14] which set the arraignment on February 13, 2007. Petitioner questioned these two orders via supplemental petition before the appellate court.

The appellate court dismissed petitioner's petition, hence, his present petition, arguing that:

PRIVATE RESPONDENT DID NOT HAVE THE RIGHT TO CAUSE THE REINVESTIGATION OF THE CRIMINAL CASE BELOW WHEN THE CRIMINAL INFORMATION HAD ALREADY BEEN FILED WITH THE LOWER COURT. HENCE, THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN FINDING THAT RESPONDENT JUDGE DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN GRANTING SUCH REINVESTIGATION DESPITE HAVING NO BASIS IN THE RULES OF COURT[;]

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN ADMITTING STATE PROSECUTOR VELASCO'S AMENDED INFORMATION, ISSUING A WARRANT OF ARREST, AND SETTING THE CASE BELOW FOR ARRAIGNMENT, CONSIDERING THAT THE VALIDITY AND LEGALITY OF HIS ORDERS DATED 24 AND 31 JANUARY 2007, WHICH LED TO THE QUESTIONABLE REINVESTIGATION AND ILLEGAL AMENDED INFORMATION[,] ARE YET TO BE RESOLVED BY THIS HONORABLE COURT (sic); [AND]

CONSIDERING THAT PROSECUTOR VELASCO'S FINDINGS IN HIS RESOLUTION DATED 2 FEBRUARY 2007 ARE BLATANTLY BASED ON MERE SPECULATIONS AND CONJECTURES, WITHOUT ANY SUBSTANTIAL OR MATERIAL NEW EVIDENCE BEING ADDUCED DURING THE REINVESTIGATION, RESPONDENT JUDGE SHOULD HAVE AT LEAST ALLOWED PETITIONER'S MOTION FOR A HEARING FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE.^[15] (emphasis in the original omitted)

Records show that the arraignment scheduled on March 21, 2007 pushed through during which petitioner refused to plead, drawing the trial court to enter a plea of "not guilty" for him.

Prior thereto or on February 23, 2007, petitioner filed an Urgent Application for Admission to Bail *Ex Abundanti Cautela*^[16] which the trial court, after hearings thereon, granted by Order of May 21, 2007,^[17] it finding that the evidence of guilt for the crime of *murder* is not strong. It accordingly allowed petitioner to post bail in the amount of P300,000 for his provisional liberty.

The trial court, absent any writ of preliminary injunction from the appellate court, went on to try petitioner under the Amended Information. By Decision of January

14, 2009, the trial court found petitioner guilty of homicide, sentencing him to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum. From the Decision, petitioner filed an appeal to the appellate court, docketed as CA-G.R. CR No. 32159, during the pendency of which he filed an urgent application for admission to bail pending appeal. The appellate court denied petitioner's application which this Court, in G.R. No. 189122, affirmed by Decision of March 17, 2010.

The Office of the Solicitor General (OSG) later argued that the present petition had been rendered moot since the presentation of evidence, wherein petitioner actively participated, had been concluded.^[18]

Waiver on the part of the accused must be distinguished from mootness of the petition, for in the present case, petitioner did not, by his active participation in the trial, waive his stated objections.

Section 26, Rule 114 of the Rules of Court provides:

SEC. 26. Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation. - An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

By applying for bail, petitioner did not waive his right to challenge the regularity of the reinvestigation of the charge against him, the validity of the admission of the Amended Information, and the legality of his arrest under the Amended Information, as he vigorously raised them *prior* to his arraignment. During the arraignment on March 21, 2007, petitioner refused to enter his plea since the issues he raised were still pending resolution by the appellate court, thus prompting the trial court to enter a plea of "not guilty" for him.

The principle that the accused is precluded after arraignment from questioning the *illegal arrest or the lack of or irregular preliminary investigation* applies "only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto."^[19] There must be clear and convincing proof that petitioner had an actual intention to relinquish his right to question the existence of probable cause. When the only proof of intention rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible.^[20]

From the given circumstances, the Court cannot reasonably infer a valid waiver on the part of petitioner to preclude him from obtaining a definite resolution of the objections he so timely invoked. Other than its allegation of active participation, the OSG offered no clear and convincing proof that petitioner's participation in the trial was unconditional with the intent to voluntarily and unequivocally abandon his

petition. In fact, on January 26, 2010, petitioner still moved for the early resolution of the present petition.^[21]

Whatever delay arising from petitioner's availment of remedies against the trial court's Orders cannot be imputed to petitioner to operate as a valid waiver on his part. Neither can the non-issuance of a writ of preliminary injunction be deemed as a voluntary relinquishment of petitioner's principal prayer. The non-issuance of such injunctive relief only means that the appellate court did not preliminarily find any exception^[22] to the long-standing doctrine that injunction will not lie to enjoin a criminal prosecution.^[23] Consequently, the trial of the case took its course.

The petition is now moot, however, in view of the trial court's rendition of judgment.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.^[24]

The judgment convicting petitioner of homicide under the Amended Information for murder operates as a supervening event that mooted the present petition. Assuming that there is ground^[25] to annul the finding of probable cause for murder, there is no practical use or value in abrogating the concluded proceedings and retrying the case under the original Information for homicide just to arrive, more likely or even definitely, at the same conviction of homicide. Mootness would have also set in had petitioner been convicted of murder, for proof beyond reasonable doubt, which is much higher than probable cause, would have been established in that instance.

Instead, however, of denying the petition outright on the ground of mootness, the Court proceeds to resolve the legal issues in order to formulate controlling principles to guide the bench, bar and public.^[26] In the present case, there is compelling reason to clarify the remedies available *before* and *after* the filing of an information in cases subject of inquest.

After going over into the substance of the petition and the assailed issuances, the Court finds no reversible error on the part of the appellate court in finding no grave abuse of discretion in the issuance of the four trial court Orders.

In his first assignment of error, petitioner posits that the prosecution has no right under the Rules to seek from the trial court an investigation or reevaluation of the case except through a petition for review before the Department of Justice (DOJ). In cases when an accused is arrested without a warrant, petitioner contends that the remedy of preliminary investigation belongs only to the accused.

The contention lacks merit.

Section 6,^[27] Rule 112 of the Rules of Court reads:

When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided

an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (underscoring supplied)

A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to fine.^[28] As an exception, the rules provide that there is no need for a preliminary investigation in cases of a lawful arrest without a warrant^[29] involving such type of offense, so long as an inquest, where available, has been conducted.^[30]

Inquest is defined as an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly be charged in court.^[31]

It is imperative to first take a closer look at the predicament of both the arrested person and the private complainant during the brief period of inquest, to grasp the respective remedies available to them before and after the filing of a complaint or information in court.

BEFORE THE FILING OF COMPLAINT OR INFORMATION IN COURT, the private complainant may proceed in coordinating with the arresting officer and the inquest officer during the latter's conduct of inquest. Meanwhile, the arrested person has the option to avail of a 15-day preliminary investigation, provided he duly signs a waiver of any objection against delay in his delivery to the proper judicial authorities under Article 125 of the Revised Penal Code. For obvious reasons, this remedy is not available to the private complainant since he cannot waive what he does not have. The benefit of the provisions of Article 125, which requires the filing of a complaint or information with the proper judicial authorities within the applicable period,^[32] belongs to the arrested person.

The accelerated process of inquest, owing to its summary nature and the attendant risk of running against Article 125, ends with either the prompt filing of an