

THIRD DIVISION

[G.R. No. 182336, December 23, 2009]

**ELVIRA O. ONG, PETITIONER, VS. JOSE CASIM GENIO,
RESPONDENT.**

RESOLUTION

NACHURA, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Resolution^[2] dated January 7, 2008.

Petitioner Elvira O. Ong (petitioner) filed a criminal complaint against respondent Jose Casim Genio (respondent) for Robbery which was dismissed by the City Prosecutor of Makati City. However, pursuant to the Resolutions dated September 15, 2006^[3] and October 30, 2006^[4] of the Department of Justice, respondent was charged with the crime of Robbery in an Information^[5] which reads:

That in or about and sometime the month of January, 2003, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously take, divest and carry away kitchen and canteen equipment as well as her personal things valued at Php 700,000.00, belonging to complainant, ELVIRA O. ONG, to the damage and prejudice of the said owner in the aforementioned amount of Php 700,000.00.

CONTRARY TO LAW.

On November 21, 2006, respondent filed a Motion to Dismiss the Case for Lack of Probable Cause Pursuant to Sec. 6(a),^[6] Rule 112 of the Rules of Court and, in View of Compelling Grounds for the Dismissal of the Case to Hold in Abeyance the Issuance of the Warrant of Arrest^[7] (Motion to Dismiss). Petitioner filed an Opposition^[8] dated December 11, 2006 to respondent's Motion to Dismiss.

In its Order^[9] of December 15, 2006, the Regional Trial Court (RTC) of Makati City, Branch 56, dismissed the case because the other elements of

the crime of Robbery, specifically the elements of intent to gain, and either

violence against or intimidation of any person or force upon things, were not specifically alleged in the Information filed against respondent.

Despite the dismissal of the case, respondent filed a Partial Motion for Reconsideration^[10] dated January 2, 2007, reiterating that the Information should be dismissed in its entirety for lack of probable cause. Petitioner filed her Opposition^[11] to this motion on February 15, 2007.

In its Order^[12] dated February 12, 2007, the RTC granted respondent's Partial Motion for Reconsideration and dismissed the case for lack of probable cause pursuant to Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure. The RTC held that the evidence on record failed to establish probable cause to charge respondent with the crime of Robbery.

On March 6, 2007, petitioner filed her Motion for Reconsideration,^[13] claiming that the RTC erred in relying on Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure, since the said provision relates to the issuance of a warrant of arrest, and it does not cover the determination of probable cause for the filing of the Information against respondent, which is executive in nature, a power primarily vested in the Public Prosecutor.

In its Order^[14] dated June 1, 2007, the RTC denied petitioner's Motion for Reconsideration, holding that the aforementioned provision authorizes

the RTC to evaluate not only the resolution of the prosecutor who conducted the preliminary investigation and eventually filed the Information in court, but also the evidence upon which the resolution was based. In the event that the evidence on record clearly fails to establish probable cause, the RTC may dismiss the case.

Aggrieved, petitioner filed a Petition for *Certiorari* and *Mandamus*^[15] before the CA on August 28, 2007. Respondent filed a Motion to Dismiss^[16] the petition, raising the issue of lack of personality of petitioner to appeal the dismissal of the criminal case, because the authority to do so lies exclusively with the State as represented by the Office of the Solicitor General (OSG). In its Resolution^[17] dated September 10, 2007, the CA observed that the People of the Philippines was impleaded as petitioner without showing, however, the OSG's participation. Thus, the CA ordered petitioner to furnish the OSG with a copy of the Petition, and the latter to comment thereon.

On October 22, 2007, the OSG filed its Comment,^[18] taking the stand of respondent that only the Solicitor General can bring or defend actions on behalf of the People of the Philippines filed before the CA or the Supreme Court. The OSG submitted that, for being fatally defective, the said Petition should be dismissed insofar as the criminal aspect was concerned, without prejudice to the right of petitioner to pursue the civil aspect of the case.

On January 7, 2008, the CA rendered its Resolution,^[19] dismissing the case without prejudice to the filing of a petition on the civil aspect thereof on the basis of the arguments raised by both respondent and the OSG. Undaunted, petitioner filed a Motion for Reconsideration^[20] which the CA denied in its Resolution^[21] dated March 27, 2008.

Hence this Petition raising the following issues:

A.

WHETHER THE PETITIONER AS THE PRIVATE OFFENDED PARTY IN A CRIMINAL CASE HAS NO PERSONALITY TO ELEVATE THE CASE TO THE COURT OF APPEALS WITHOUT THE COMFORMITY OF THE OFFICE OF THE SOLICITOR GENERAL EVEN BEFORE THE ACCUSED IS ARRAIGNED

B.

WHETHER THE REGIONAL TRIAL COURT HAS AUTHORITY TO DISMISS THE INFORMATION ON THE GROUND OF LACK OF PROBABLE CAUSE CONTRARY TO THE FINDINGS OF THE SECRETARY OF THE DEPARTMENT OF JUSTICE

C.

WHETHER THE REGIONAL TRIAL COURT HAS THE AUTHORITY TO DISMISS THE INFORMATION ON THE GROUND OF LACK OF PROBABLE CAUSE WHEN IT HAS PREVIOUSLY CONCLUDED THAT THE SAME INFORMATION IS DEFECTIVE[.]^[22]

The instant Petition is bereft of merit.

Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. Likewise, the Solicitor General shall represent the Government in this Court and the CA in all criminal proceedings, thus:

SEC. 35. *Powers and Functions.* -- The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

This doctrine is laid down in our ruling in *Heirs of Federico C. Delgado and Annalisa*