

## FIRST DIVISION

[ G.R. Nos. 154150-51, December 10, 2007 ]

**NIDA ALEJO, FRANCISCA ALEJO AND THE PEOPLE OF THE PHILIPPINES, PETITIONERS, VS. THE HONORABLE JUDGE ERLINDA PESTAÑO-BUTED, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 40, PALAYAN CITY, NUEVA ECIJA, ARTHUR SERNA AND JONG LINSANGAN, RESPONDENTS.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is a petition for *certiorari*, prohibition, and *mandamus* seeking to nullify and set aside the Order<sup>[1]</sup> of the Regional Trial Court (RTC), Branch 40, Palayan City, Nueva Ecija dated June 26, 2002 in Criminal Cases Nos. 1316-P and 1317-P for having been issued with grave abuse of discretion tantamount to lack or excess of jurisdiction.

The facts, as culled from the record, are as follows:

In an Information dated March 6, 2002, docketed as Criminal Case No. 1316-P, State Prosecutor Phillip I. Kimpo of the Department of Justice charged Arthur Serna, Jong Linsangan, Ricardo Peralta alias "Ric," Crisanto dela Cruz, Joey Cena, Jonny Diozon alias "Johnny," one alias "Boy" and twenty (20) John Does with kidnapping for ransom defined and penalized under Article 267 of the Revised Penal Code, as amended. The Information reads:

That on or about October 7, 2001, at Bongabon, Nueva Ecija, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with ARTHUR SERNA acting as the mastermind in contracting, thru JONG LINSANGAN, his personal driver and long-time friend, a criminal gang from Bongabon called the "Red Vigilante Group (RVG) composed of the herein accused and headed by RICARDO PERALTA, alias "RIC," did then and there, by force and intimidation, and with the use of firearms, willfully, unlawfully, and feloniously take, carry away and detain up to the present JULIO ALEJO and his son JULIUS against their will and consent thereby depriving them of their liberty for the purpose of extorting ransom for their release in the original amount of P5 million and later reduced to P3 million, which amount, however, could not be paid by the victims' family, all to the damage and prejudice of the two victims and their family in such amount as may be awarded to them under the provisions of the Civil Code.

CONTRARY TO LAW.

In another Information, also dated March 6, 2002, docketed as Criminal Case No. 1317-P, the same accused in Criminal Case No. 1316-P were charged with robbery committed as follows:

That on or about October 7, 2001, at Bongabon, Nueva Ecija and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, and armed with different kinds of firearms and caliber, with intent of gain and by means of violence or intimidation on the person, did, then and there, willfully, unlawfully, and feloniously take and carry away from the kidnapped JULIO ALEJO the following personal propert(ies): (a) grocery items worth P100,000.00; (b) BPI ATM card with more or less P250,000.00 account; (c) cash money of P350,000.00, (d) licensed pistol Cal. 45, (e) Dia Star Rado wristwatch, (f) Polo sunglasses, (g) a college ring with markings "BSF," (h) Equitable and PCIB checks worth P1.6M, and from complainant FRANCISCA ALEJO the following personal propert(ies): (a) P3,000.00 cash money, and (b) Saudi gold necklace with pendant, to the damage and prejudice of the aforesaid JULIO ALEJO and FRANCISCA ALEJO in the total sum of approximately Two Million and Five Hundred Thousand Pesos (P2,500,000.00), Philippine currency.

#### CONTRARY TO LAW.

On March 14, 2002, the above Informations were filed with the RTC of Palayan City which issued warrants of arrest against the accused. On March 21, 2002, Arthur Serna and Jong Linsangan, private respondents, were arrested.

On April 22, 2002, petitioners Nida Alejo and Francisca Alejo filed with the Office of the Court Administrator a request for transfer of venue in both criminal cases due to "threats to their personal safety" and that of their witnesses and the possibility that the criminal gang from Bongabon, Nueva Ecija, known as the Red Vigilante Group (RVG), might pressure then Presiding Judge Erlinda Pestaño-Buted,<sup>[2]</sup> public respondent, in deciding the cases in favor of the accused.

When arraigned on April 23, 2002, private respondents pleaded not guilty to the charges. Thereupon, petitioners moved for suspension of the proceedings pending resolution of their request for transfer of venue. However, respondent judge did not act on the motion. The following day, private respondents filed a motion for bail in Criminal Case No. 1316-P.

Meanwhile, the police arrested one Miguel De la Cruz, a suspected RVG member, for illegal possession of firearms. During the custodial investigation, he disclosed to the law enforcers that he was present at the RVG "safehouse" in Jaen, Nueva Ecija where the abductors detained Julio Alejo and Julius Alejo; that the duo were killed two days later; and that he even helped in digging their common grave. De la Cruz also informed the police of the real names of the 17 John Does impleaded in Criminal Cases Nos. 1316-P and 1317-P. He agreed to testify against the accused and applied for protection under the Witness Protection Program pursuant to Republic Act No. 6981. Nonetheless, he was still charged with illegal possession of firearms in an Information docketed as Criminal Case No. 1338-P. He was taken into protective custody by the Philippine National Police (PNP) at Camp Olivas, San Fernando City.

Upon motion of the State Prosecutor, respondent judge ordered that the Information in Criminal Case No. 1317-P be amended in the sense that the charge of robbery be changed to robbery with double homicide.

On June 11, 2002, respondent judge issued a verbal order directing the immediate release of De la Cruz from the PNP's custody on the following grounds: (a) no warrant of arrest had been issued against him in Criminal Cases Nos. 1316-P and 1317-P; (b) he is not a witness for the prosecution; and (c) he posted bail in Criminal Case No. 1338-P. The private prosecutor vehemently objected to the release of De la Cruz considering that he is a potential witness for the prosecution. But respondent judge ignored the objection.

On July 2, 2002, petitioners, with the conformity of the State Prosecutor, filed a Motion to Inhibit respondent judge from further hearing Criminal Cases Nos. 1316-P and 1317-P on the following grounds:

- A. *During the hearing of the above-captioned cases, the Honorable Court motu proprio brought out the matter of the bail bond posted by or for Miguel dela Cruz in a case for illegal possession of firearms, docketed as Criminal Case No. 1338-P, pending before this Honorable Court, directing that Miguel de la Cruz be released from custody, despite the fact that the Honorable Court has not yet acquired jurisdiction over the said Miguel de la Cruz since no warrant for his arrest has been issued in the above-captioned cases, nor has he voluntarily surrendered.*
- B. *The Honorable Court made it appear that the said order concerning Miguel de la Cruz was issued in Criminal Case No. 1338-P. when the truth of the matter is that it was issued in open court during the hearing of the above-captioned cases.*
- C. *The Honorable Court ordered the immediate release of Miguel de la Cruz "if indeed he is detained" without granting the bonding company concerned and/or the PNP Regional Command at Camp Olivas the opportunity to be heard.*
- D. *The Honorable Court has, time and again, even during the hearing in the above-captioned cases on 11 June 2002, expressed dismay, if not anger, at the PNP officers from Camp Olivas who are handling the investigation of the above-captioned cases as well as the illegal possession case against Miguel de la Cruz.*
- E. *The Honorable Court has continued to conduct proceedings in the above-captioned cases despite the pending petition for transfer of venue filed by private complainants with the Supreme Court.*
- F. *The Honorable Court ordered the immediate release of ELIAS MINGOY, one of the accused in the above-captioned cases, in a habeas corpus case in violation of Section 15, Rule 102 of the Revised Rules of Court.*