

SECOND DIVISION

[G.R. NO. 163818, October 20, 2005]

SEBASTIAN SERAG, LINO NAPAO, THOMIX SEGUMALIAN, JOSE OLIVER SEGUMALIAN, RODOLFO TALANQUINES, ROQUE SANMILLAN, EDGAR STA. CRUZ, ELEAZAR SAÑOL, NEMESIO PANUGOT, TEODORICO DELA CRUZ, VICENTE DELA CRUZ, ABRAHAM DELA CRUZ AND MARILYN SILFAVAN, PETITIONERS, VS. COURT OF APPEALS AND MA. DAISY SIBYA, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

In the wee hours of May 11, 2001, Atty. Jesus Sibya, Jr., a mayoralty candidate in San Joaquin, Iloilo during the 2001 elections, was shot to death in front of his residence. His driver, Norberto Salamat III, was also wounded. The Criminal Investigation and Detection Group in Iloilo City filed a criminal complaint for murder and attempted murder against Lino Napao, then incumbent mayor of San Joaquin, and Sebastian Serag.^[1] In a Joint Resolution dated May 26, 2001, the Provincial Prosecutor filed two Informations with the Regional Trial Court (RTC) of Guimbal, Iloilo: (1) for Murder with the Use of Unlicensed Firearms, and (2) Attempted Murder with the Use of Unlicensed Firearms against Serag and Napao and seven unidentified persons.^[2] The cases were docketed as Criminal Case Nos. 925 and 926.

On May 28, 2001, Norberto Salamat III and Ma. Daisy Sibya, the widow of the deceased, filed before the Office of the Provincial Prosecutor a Supplemental Complaint for murder, frustrated murder and violation of Presidential Decree No. 1866 against Serag, Lino Napao, 16 others, and three other unidentified persons.^[3] On July 26, 2001, the Provincial Prosecutor issued a Joint Resolution finding probable cause for murder and attempted murder with the use of unlicensed firearms against Serag, Lino Napao, Juan Napao and 14 other accused, including those whose identities were earlier unknown.^[4] The Provincial Prosecutor filed, in the RTC of Guimbal, Iloilo, an Amended Information for Murder^[5] and an Amended Information for Attempted Murder with the use of unlicensed firearm against the said accused.

Accused Juan Napao and the 14 other additional accused filed on August 16, 2002, a petition for review of the July 26, 2001 Joint Resolution of the Provincial Prosecutor before the Department of Justice (DOJ).^[6]

The trial court found probable cause for murder and attempted murder against the accused. Consequently, the court issued an Order^[7] on September 27, 2001, for the issuance of warrants for the arrest of the accused who were still at large.

Pending the resolution by the Secretary of Justice of the said petition for review, the proceedings were suspended. Subsequently, however, the arraignment of the accused was set on May 21, 2002. It was, thereafter, reset to June 6, 2002 which, by agreement of the prosecution and the defense, was "intransferrable" in character.

[8] It turned out that the day before (May 20, 2002), the Secretary of Justice had issued Resolution No. 258 affirming with modification, the Joint Resolution of the Provincial Prosecutor, downgrading the charges from Murder to Homicide, and from Attempted Murder to Attempted Homicide, respectively, except as to four of the accused. The Provincial Prosecutor was likewise ordered to amend the Amended Informations accordingly.[9] The RTC received a copy of the Resolution on May 27, 2002.

Ma. Daisy Sibya, likewise, received, on May 27, 2002, a copy of the said Resolution. She filed a motion for the reconsideration of the said resolution on June 4, 2002, serving copies thereof on the RTC and the accused-petitioners by registered mail.

In compliance with Resolution No. 258 of the Secretary of Justice, the Provincial Prosecutor filed before the RTC on June 5, 2002 a Motion for Leave to File a Second Amended Information for homicide and attempted homicide in the two cases, and for the court to admit the said second Amended Informations.[10] The motion was set for hearing at 2:00 p.m. of June 6, 2002. During the said hearing, the private prosecutors opposed the motion and moved for deferment, contending that the private complainant had earlier filed a motion for reconsideration of Resolution No. 258, and that it would be premature for the Provincial Prosecutor to file a motion for the admission of the Second Amended Information and for the court to admit the same.[11] The Provincial Prosecutor joined the motion of the private prosecutors.

However, the RTC verbally granted the motion of the Provincial Prosecutor, and admitted the Second Amended Information for Homicide.[12] Criminal Case No. 926 for the attempted homicide was, likewise, dismissed on the ground that it had no jurisdiction over the said case. The RTC further declared that it had not been served with a copy of the private complainant's motion for reconsideration. The court forthwith arraigned the accused for homicide, who pleaded not guilty to the crime charged.

On June 6, 2002, the RTC issued its Order[13] granting the motion of the Provincial Prosecutor for the admission of the Second Amended Information for Homicide, and ordered the dismissal of Criminal Case No. 926 without prejudice to its re-filing in the Municipal Trial Court (MTC). Accordingly, the Information was re-filed in the MTC, docketed as Criminal Case No. 1604. The accused were arraigned for the said cases.[14] Taking into account the finding of the Secretary of Justice, the court held that the finding of probable cause for murder against the accused did not bar it from admitting the Second Amended Information for Homicide. Likewise, the pendency of the private complainant's motion for the reconsideration of the May 20, 2002 Resolution of the Secretary of Justice was not a valid reason for the deferment of the arraignment of the accused for homicide. On June 19, 2002, the private prosecutors moved for the reconsideration of the order of the trial court which, however, denied the motion in an Order[15] dated July 26, 2002.

The private complainant forthwith assailed the orders of the trial court and the

arraignment of the accused on June 6, 2002 via a petition for *certiorari* in the Court of Appeals (CA). The case was docketed as CA-G.R. SP No. 73035. She insisted that the admission by the RTC of the Second Amended Information downgrading the crime charged therein to Homicide and the arraignment of the accused therein on June 6, 2002 were premature since the Secretary of Justice had not yet resolved her motion for reconsideration of the May 20, 2002 Resolution.

On November 22, 2002, the CA issued a Temporary Restraining Order enjoining the RTC from proceeding with Criminal Case Nos. 925 and 926.^[16]

In the meantime, the Secretary of Justice issued a Resolution^[17] on November 18, 2002, granting the motion for reconsideration of the private complainant, setting aside Resolution No. 258. Consequently, the May 26, 2001 and July 26, 2001 Resolutions of the Provincial Prosecutor were reinstated. The Secretary of Justice opined that the killing of the deceased was, after all, qualified by treachery. He further declared that he was not proscribed from taking cognizance of and resolving the private complainant's motion for reconsideration notwithstanding the arraignment of the accused. He directed the Provincial Prosecutor to withdraw the Second Amended Information for Homicide and Attempted Homicide and to file, in lieu thereof, separate Informations for Murder and Attempted Murder, respectively, against the said accused.

On December 5, 2002, the accused-petitioners filed a motion for the reconsideration of the said Resolution.^[18] They argued that, with their arraignment in the RTC and the MTC, the Secretary of Justice should have denied the private complainant's motion for reconsideration, conformably with Section 7(2) of DOJ Circular No. 70. However, the Secretary of Justice denied the said motion.

Juan Napao and the other petitioners in the Department of Justice filed a petition for *certiorari* with the CA assailing the November 18, 2002 Resolution of the Secretary of Justice, and praying for the reinstatement of Resolution No. 258. The case was docketed as CA-G.R. SP No. 77759.

In a Resolution^[19] dated July 18, 2003, the CA dismissed the petition for failure of the petitioners therein to comply with Section 2, Rule 42 and Section 5, Rule 7 of the Rules of Court, as only one of the petitioners had executed the requisite certificate of non-forum shopping. The petitioners therein filed a motion for the reconsideration of the CA resolution, but the appellate court denied the motion for lack of merit.^[20]

On June 3, 2004, Sebastian Serag, *et al.* filed a petition for review on *certiorari* with this Court, assailing the Resolutions of the CA in CA-G.R. SP No. 77759. The case was docketed as G.R. No. 163557. In a Resolution dated June 23, 2004, this Court denied the petition for the petitioners' failure to show that the appellate court committed any reversible error. The said resolution became final and executory, and entry of judgment was made of record on August 23, 2004.

Meanwhile, on November 22, 2002, the CA issued a Resolution^[21] in CA-G.R. SP No. 73035 directing the respondents to file their comment on the petition within 10 days from notice thereof.

On November 27, 2002, petitioner Ma. Daisy Sibya filed an Urgent Manifestation and Motion^[22] with the CA in CA-G.R. SP No. 73035, praying that the appellate court resolve her petition on its merits in light of the November 18, 2002 Resolution of the Secretary of Justice and to set aside the June 6, 2002 arraignment of the private respondents in the trial court. The private respondents opposed the motion on the ground that they had filed a Joint motion for reconsideration of the November 18, 2002 Resolution of the Secretary of Justice, who had yet to resolve the same.^[23]

On December 4, 2002, the Provincial Prosecutor filed a Motion with the trial court for the withdrawal of the Second Amended Information for homicide and for the reinstatement of the Amended Information for murder. However, in view of the temporary restraining order issued by the CA in CA-G.R. SP No. 73035, the trial court suspended the proceedings.

On December 16, 2002, the CA issued a Resolution^[24] in CA-G.R. SP No. 73035 dismissing the petition on the ground that it had become moot and academic in light of the November 18, 2002 Resolution of the Secretary of Justice. Private complainant Ma. Daisy Sibya filed a motion for reconsideration of the said Resolution on the ground that the November 18, 2002 Resolution of the Secretary of Justice could not be implemented unless and until the assailed Orders of the trial court and the arraignment of the accused therein on June 6, 2002 are nullified.^[25] The private respondents therein opposed the motion on the ground that the petitioner was estopped from assailing their arraignment.

On November 10, 2003, the CA issued a Resolution^[26] granting the motion of the petitioner in CA-G.R. SP No. 73035 and consequently nullifying the June 6 and July 26, 2002 Orders of the trial court, as well as the arraignment of the private respondents therein on June 6, 2002.

On June 21, 2004, Sebastian Serag, *et al.* filed a Petition for review on *certiorari* with this Court assailing the November 10, 2003 Resolution of the CA in CA-G.R. SP No. 73035. The case was docketed as G.R. No. 163818. The petitioners alleged that the CA acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to either lack or excess of jurisdiction in nullifying the June 6, 2002 and July 26, 2002 Orders of the RTC and their arraignment on June 6, 2002 instead of dismissing the petition for being moot and academic.^[27]

The petitioners insist that by virtue of the Secretary of Justice's November 18, 2002 Resolution, reverting to the original charges of murder and attempted murder, the private respondent's petition in the CA had been mooted. They note that the relief prayed for by the petitioner therein (private respondent Sibya) for the retention of the original charges was granted by the Secretary of Justice. They maintain that the CA was correct in dismissing the petition for being moot and academic in its Resolution of

December 16, 2002. The private complainant should have filed the appropriate pleading in the trial court for the implementation of the November 18, 2002 Resolution of the Secretary of Justice, instead of insisting that her petition be resolved on its merits. By its November 10, 2003 Resolution nullifying the assailed Orders of the RTC and the arraignment of the petitioners on June 6, 2002, the CA thereby deprived the RTC of its jurisdiction to act on all pending motions of the

Provincial Prosecutor, that is, for the withdrawal of the Second Amended Information for homicide and the reinstatement of the Amended Information for murder. The petitioners insist that the RTC had the authority to delve into and resolve the merits of the Provincial Prosecutor's motion for the withdrawal of the Second Amended Information for homicide and the reinstatement of the Amended Information for murder. After all, the trial court has complete control of the case; any disposition therein is subject to its sound discretion and it is not bound by the findings and recommendations of the Secretary of Justice.

The petitioners further claim that their arraignment on June 6, 2002 was on the insistence of the prosecutors, making the setting "intransferrable" whether or not the Secretary of Justice would resolve their petition for review. Thus, the RTC had no other alternative but to proceed with their arraignment. Moreover, the private complainant failed to serve them and the RTC with copies of her motion for reconsideration in the DOJ on or before the said date. The private prosecutors' service of the said motion for reconsideration on them (petitioners) and the RTC by registered mail was anomalous, considering the proximity of the law office of the private prosecutors, the defense counsel and the RTC.

Finally, the petitioners emphasize that the private respondent failed to append to her petition in CA-G.R. SP No. 73035 certified true copies of the assailed orders; hence, the appellate court abused its discretion in not dismissing the said petition outright.

In her comment on the petition, the private respondent averred that the instant petition had been mooted by this Court's dismissal of the petitioners' petition in G.R. No. 163557.

In reply, the petitioners contend that the subject matter of their petition in CA-G.R. SP No. 77759 was the November 18, 2002 Resolution of the Secretary of Justice, while the subject matter of CA-G.R. SP No. 73035 were the June 6, 2002 and July 26, 2002 Orders of the RTC, as well as the petitioners' arraignment on June 6, 2002.

The threshold issues for resolution are the following: (a) whether the petition at bench is barred by the resolution of this Court in G.R. No. 163557 denying due course and dismissing the petition for review on *certiorari*; and (b) whether the CA committed grave abuse of discretion amounting to excess or lack of jurisdiction in nullifying the June 6, 2002 and July 26, 2002 Orders of the RTC and their arraignment on June 6, 2002 instead of dismissing the petition in CA-G.R. SP No. 73035 for being moot and academic.

On the first issue, we find the contention of the private respondent to be barren of merit. A motion is considered moot when it no longer presents a justiciable controversy because the issues involved have become academic or dead.^[28] Courts will not determine a moot question in which no practical relief can be granted.^[29] However, the Court will decide a question otherwise moot and academic if it is capable of repetition, yet evading review.^[30]

In the present case, the issues posed by the petitioner in CA-G.R. SP No. 77759 are as follows: