

FIRST DIVISION

[G.R. No. 158543, July 21, 2004]

ROSALINDA PUNZALAN, RANDALL PUNZALAN AND RAINIER PUNZALAN, PETITIONERS, VS. DENCIO DELA PEÑA AND ROBERT CAGARA, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for review under Rule 45 of the Revised Rules of Court is the June 6, 2002 Decision^[1] of the Court of Appeals and its May 23, 2003 Resolution which denied petitioners' motion for reconsideration.

The Punzalan and the Plata families were neighbors in Hulo Bliss, Mandaluyong City. At around 11:00 p.m. of August 13, 1997, Dencio dela Peña, a house boarder of the Platas, was in front of a store near their house when the group of Rainier Punzalan, Randall Punzalan, Ricky Eugenio, Jose Gregorio, Alex "Toto" Ofrin, and several others arrived. Ricky Eugenio shouted at Dela Peña, "*Hoy, kalbo, saan mo binili and sumbrero mo?*"^[2] Dela Peña replied, "*Kalbo nga ako, ay pinagtatawanan pa ninyo ako.*"^[3] Irked by the response, Jose Gregorio slapped Dela Peña while Rainier punched him in the mouth. The group then ganged up on him. In the course of the melee, somebody shouted, "*Yariin na 'yan!*"^[4] Thereafter, Alex "Toto" Ofrin kicked Dela Peña and tried to stab him with a *balisong* but missed because he was able to run. The group chased him.

While Dela Peña was fleeing, he met Robert Cagara, the Platas' family driver, who was carrying a gun. He grabbed the gun from Cagara and pointed it to the group chasing him in order to scare them. Michael Plata, who was nearby, intervened and tried to wrestle the gun away from Dela Peña. The gun accidentally went off and hit Rainier Punzalan on the thigh. Shocked, Dela Peña, Cagara and Plata ran towards the latter's house and locked themselves in. The group ran after them and when they got to the Platas' house, shouted, "*Lumabas kayo d'yan, putang ina ninyo! Papatayin namin kayo!*"^[5] Dela Peña, Cagara, and Plata left the house through the back door and proceeded to the police station to seek assistance.

As a result of the incident, Rainier Punzalan filed a criminal complaint against Michael Plata for Attempted Homicide^[6] and against Robert Cagara for Illegal Possession of Firearm. In turn, Plata, Cagara and Dela Peña filed several counter-charges^[7] for grave oral defamation, grave threats, robbery, malicious mischief and slight physical injuries against the Punzalans, including one for Attempted Murder filed by Dela Peña against Rainier and Randall Punzalan and fourteen others (I.S. No. 97-11528); and one for Grave Threats filed by Dela Peña against Alex "Toto" Ofrin (I.S. No. 97-11520-21).

In their counter-affidavit,^[8] the Punzalans argued that the charges against them were fabricated in order to dissuade them from testifying in the Attempted Homicide and Illegal Possession of Firearm cases instituted by Rainier against Plata and Cagara, respectively.

Subsequently, Robert Cagara also filed a complaint for Grave Oral Defamation, docketed as I.S. No. 97-11522, against Rosalinda Punzalan, mother of Rainier, alleging that on October 16, 1997 at the Office of the Prosecutor of Mandaluyong City, Rosalinda approached him, and within hearing distance of other people, told him, "*Hoy Robert, magkanong ibinigay ng mga Plata sa iyo sa pagtestigo? Dodoblehin ko at ipapasok pa kita ng trabaho.*"^[9] In her defense, Rosalinda denied having uttered the alleged defamatory statements.

On July 28, 1998, the Assistant City Prosecutor of Mandaluyong City dismissed the complaint for Grave Oral Defamation against Rosalinda Punzalan,^[10] holding that Cagara failed to show that the alleged defamatory statements would cast dishonor, discredit or contempt upon him. He also found that the statements were uttered by Rosalinda in a state of distress and, hence, were not actionable.^[11] The charge of Attempted Murder against Rainier, Randall and 14 others was also dismissed by the Assistant Prosecutor because complainant Dela Peña's claim that he accidentally shot Rainier forms part of the defense of Michael Plata in the Attempted Homicide case previously filed by Rainier against the latter.^[12]

Dela Peña and Cagara separately appealed to the Department of Justice. On March 23, 2000, then Justice Secretary Artemio Tuquero issued a Resolution modifying the July 28, 1998 Joint Resolution of the Assistant City Prosecutor by ordering, among others – (1) that the charge of Grave Oral Defamation against Rosalinda Punzalan be downgraded to Slight Oral Defamation; (2) that the charge of Attempted Murder against Rainier, Randall and 14 others be downgraded to Attempted Homicide; and (3) that the charge of Grave Threats against Alex "Toto" Ofrin be downgraded to Other Light Threats. The dispositive portion of the Resolution reads:

WHEREFORE, the resolution is hereby MODIFIED. The City Prosecutor of Mandaluyong City is directed to file information for three (3) counts of slight oral defamation against Rosalinda Punzalan; information for two (2) counts [of] other light threats against Alexander "Toto" Ofrin; information for attempted homicide against Alexander "Toto" Ofrin, Rainier Punzalan, Jose Gregorio Lanuzo, Avelino Serrano, Lito dela Cruz, Emmanuel Nobida, Randall Punzalan, Mark Catap, Ricky Eugenio, Alejandro Diez, Vicente Joven Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar and Raymond Poliquit; information for malicious mischief and theft against Rainier Punzalan, Mark Catap, Alejandro Diez, Jose Gregorio Lanuzo, Alexander "Toto" Ofrin, Herson Mendoza, Emmanuel Nobida, Edwin Vivar, Avelino "Bobby" Serrano, and John Does; and to report action taken within 10 days from receipt hereof.

SO ORDERED.^[13]

Petitioners, Rosalinda, Rainier and Randall Punzalan, together with their co-respondents, filed separate motions for reconsideration. On June 6, 2000, the Secretary of Justice set aside the March 23, 2000 Resolution and directed the

withdrawal of the Informations against the movants. He ruled, among others, that the Oral Defamation case should be dismissed because the alleged defamatory statements were uttered without malice as Rosalinda was then in a state of shock and anger. Anent the Attempted Homicide case filed by Dela Peña against Rainier, the Secretary held that the allegations in support thereof should first be threshed out in the trial of the Attempted Homicide case filed by Rainier against Michael Plata. He added that Dela Peña failed to prove that Rainier, Randall and his companions intended to kill him. The dispositive portion thereof reads:

Wherefore, in view of the foregoing, the appealed resolution is REVERSED. The resolution dated March 23, 2000 is set aside and the City Prosecutor of Mandaluyong City is directed to withdraw the separate informations for slight oral defamation, other light threats, attempted homicide, malicious mischief and theft against all respondents and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED.^[14]

Respondents filed a motion for reconsideration of the foregoing Resolution, but the same was denied in a Resolution dated October 11, 2000.^[15]

On January 11, 2001, respondents filed a petition for certiorari with the Court of Appeals praying that the City Prosecutor of Mandaluyong be directed to file one count of Slight Oral Defamation against Rosalinda; one count of Attempted Homicide against Rainier, Randall and 14 others; and two counts of Other Light Threats against Alex "Toto" Ofrin.^[16]

On June 6, 2002, the Court of Appeals rendered judgment as follows:

WHEREFORE, premises considered, the petition is granted and the questioned Resolutions of public respondent dated 06 June 2000 and 11 October 2000 are set aside insofar as it directed the withdrawal of informations for slight oral defamation against Rosalinda Punzalan and attempted homicide against the respondents Alexander "Toto" Ofrin, Rainier Punzalan, Jose Gregorio Lanuzo, Avelino Serrano, Lito de la Cruz, Emmanuel Nobido, Randall Punzalan, Mark Catap, Ricky Eugenio, Alejandro Diez, Vicente "Joven" Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar, and Raymond Poliquit.

The resolution dated 06 June 2000 and 11 October 2000 is hereby affirmed insofar as it directed the withdrawal of information for two (2) counts of other light threats against Alexander "Toto" Ofrin.

SO ORDERED.^[17]

Petitioners' motion for reconsideration was denied.^[18] Hence, the instant petition raising the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS REVERSIBLE ERROR IN SETTING ASIDE THE RESOLUTIONS OF THE

HONORABLE SECRETARY OF JUSTICE DATED JUNE 6, 2000 AND OCTOBER 11, 2000.

II

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THERE IS SUFFICIENT EVIDENCE TO SHOW THAT, MORE LIKELY THAN NOT, SLIGHT ORAL DEFAMATION HAD BEEN COMMITTED AND WAS COMMITTED BY HEREIN PETITIONER ROSALINDA PUNZALAN.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE ALLEGATIONS OF RESPONDENTS AND THEIR WITNESSES, WHICH SHOULD BE GIVEN WEIGHT, ARE SUFFICIENT TO PROVE INTENT TO KILL SUCH THAT PETITIONERS RANDALL AND RAINIER PUNZALAN MUST BE PROSECUTED FOR ATTEMPTED HOMICIDE.^[19]

The issue to be resolved in this petition is whether or not there is sufficient evidence to sustain a finding of probable cause against petitioner Rosalinda Punzalan for Slight Oral Defamation and against petitioners Randall and Rainier Punzalan for Attempted Homicide.

The petition is impressed with merit.

The pertinent law in relation to this case is Section 1 of Rule 65 of the Rules of Court, which provides:

Section 1. *Petition for certiorari*. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

A petition for certiorari is the proper remedy when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy, and adequate remedy at law. Where the error is in the judge's findings and conclusions or to cure erroneous conclusions of law and fact, appeal is the remedy.^[20]

Lack of jurisdiction and excess of jurisdiction are distinguished thus: the respondent acts without jurisdiction if he does not have the legal power to determine the case; where the respondent, being clothed with the power to determine the case, oversteps his authority as determined by law, he is performing a function in excess of his jurisdiction.^[21] In the case of *Meat Packing Corp. v. Sandiganbayan*,^[22] it was held that grave abuse of discretion implies a capricious and whimsical exercise