

## SECOND DIVISION

[ G.R. No. 158236, September 01, 2004 ]

**LIGAYA V. SANTOS, PETITIONER, VS. DOMINGO I. ORDA, JR.,  
RESPONDENT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 72962 granting the petition for *certiorari* filed by Domingo I. Orda, Jr. and nullifying the Orders<sup>[2]</sup> of the Regional Trial Court of Parañaque City, Branch 258 dated July 5, 2002 and July 23, 2002 in *People v. Ligaya V. Santos, et al.*, for murder, docketed as Criminal Cases Nos. 01-0921 and 01-0425.

#### The Antecedents

On January 17, 2001, Dale B. Orda, a college student and son of respondent, Assistant City Prosecutor of Manila Domingo Orda, Jr., was shot by a male person on a motorcycle at the corner of Ayala Boulevard and San Marcelino Street, Manila. Dale was then seated at the passenger's seat at the back of their car, while his father was at the wheel. Fortunately, Dale survived the shooting.<sup>[3]</sup>

At about 6:20 p.m. on April 2, 2001, another son of the respondent, Francis Orda, a twenty-year-old senior engineering student of the Mapua Institute of Technology, was shot to death at Saudi Arabia Street corner Sierra Leone Street, Better Living Subdivision, Barangay Don Bosco, Parañaque City. Gina Azarcon, a helper at the Bakers Brew Coffee Shop at the corner of Saudi Arabia and Somalia Streets, Barangay Don Bosco, gave a sworn statement to the police investigators on April 1, 2001, declaring that three male persons perpetrated the crime, two of whom shot the victim inside his car.<sup>[4]</sup>

On April 7, 2001, Azarcon gave a supplemental affidavit pointing to and identifying Rolly Tonion and Jhunrey Soriano as two of the assailants.<sup>[5]</sup> An Information was filed in the RTC of Parañaque City, docketed as Criminal Case No. 01-0425 on April 18, 2001, charging Rolly Tonion *alias* "Komang" and Jhunrey Soriano with murder for the killing of Francis Orda.<sup>[6]</sup>

The accused filed a petition for bail. The prosecution presented Gina Azarcon as its witness in opposition to the petition.

On June 7, 2001, Ernesto M. Regala and his son, Dennis C. Regala, a *barangay tanod* of Barangay 659, Arroceros, Ermita, Manila, executed separate affidavits before the Assistant City Prosecutor of Parañaque City. Ernesto narrated that at about 10:00 p.m. on April 1, 2001, he sent his son, Dennis, to deliver collections

from the public toilet at Arroceros to Barangay Chairman Ligaya Santos. When Dennis had not yet arrived by 11:00 p.m., he decided to fetch his son. While they were in Santos' office, Dennis and Ernesto heard Santos saying, "*Gusto ko malinis na trabaho at walang bulilyaso, baka makaligtas na naman si Orda.*" They saw Santos give a gun to Rolly Tonion, who was then with Edna Cortez, a certain Nognog, Ronnie Ybañez, and another male companion. Dennis then gave Ernesto's collection amounting to P400 to Santos. At 11:00 p.m. on April 2, 2001, Cortez told Ernesto that the son of the assistant city prosecutor was ambushed at the Better Living Subdivision, and that the latter was fortunate because the bullet intended for him hit his son instead.<sup>[7]</sup> For his part, Dennis alleged that at 9:00 a.m. on April 3, 2001, Tonion asked him to return the gun to Santos for him, but that he refused to do so. On April 15, 2001, Santos asked him to monitor the activities of the respondent and his son at the store owned by the latter, located at the LRT Station at Arroceros.

The respondent executed an affidavit-complaint dated June 7, 2001 and filed the same in the Office of the City Prosecutor of Parañaque City, charging Santos, Cortez and Ybañez with murder for the death of his son Francis.<sup>[8]</sup> The case was docketed as I.S. No. 01-F-2052.

In her counter-affidavit, Santos denied the charge and claimed that the affidavits executed by Ernesto and Dennis were all lies. She averred that she was in their house in Cavite City on April 1, 2001 and returned to Manila only in the early morning of April 2, 2001. Her alibi was corroborated by the affidavits of Anthony Alejado, Marianito Fuentes, Normita Samonte, and Lilian Lemery. She also denied Dennis' claims that she asked him to monitor the activities of the respondent and his son on April 15, 2001. She alleged that the respondent filed the charge and other baseless charges against her to enable him to gain control over Plaza Lawton where his store was located.

Cortez also denied the charge. She claimed in her affidavit that Santos was not in her office on April 1, 2001, it being a Sunday. She alleged that the affidavits of Dennis and Ernesto were lies.

On July 31, 2001, the investigating prosecutor issued a Resolution finding probable cause against Santos and Cortez for murder.<sup>[9]</sup> An Information for murder was, thereafter, filed on August 29, 2001 against Santos and Cortez, docketed as Criminal Case No. 01-0921.<sup>[10]</sup>

On August 30, 2001, Azarcon executed an affidavit implicating Barangay Kagawad Christopher Castillo, his brother Girlie Castillo, and Robert Bunda for the killing of Francis. On the same day, the respondent executed an affidavit-complaint charging them for the same crime.<sup>[11]</sup> On September 7, 2001, the trial court issued an Order requiring the prosecutor to submit additional evidence against Cortez.<sup>[12]</sup> Sabino M. Frias, thereafter, executed an affidavit on September 18, 2001, implicating Santos, Cortez, the Castillo brothers, Bunda, and Pedro Jimenez, the driver of Santos, in the killing of Francis.<sup>[13]</sup>

Meanwhile, Santos, Cortez, and Ybañez filed a petition for review of the resolution of the prosecutor in I.S. No. 01-F-2052 in the Department of Justice (DOJ).<sup>[14]</sup> On

their motion, the trial court suspended the proceedings against Santos and Cortez and the issuance of warrants for their arrest. However, on September 12, 2001, Azarcon executed an affidavit recanting her statement against the Castillo brothers and Bunda.<sup>[15]</sup>

In the meantime, during the hearing on October 23, 2001, the prosecution terminated the presentation of its testimonial evidence in Criminal Case No. 01-0425 on the accused Tonion and Soriano's petition for bail and offered its documentary evidence. The accused presented Azarcon as their first witness to prove their innocence of the crime charged.

On November 12, 2001, the public prosecutor issued a Resolution in I.S. No. 01-H-3410 finding probable cause for murder against the Castillo brothers and Bunda. On November 28, 2001, the public prosecutor filed a motion to amend information and to admit amended information against them as additional accused.<sup>[16]</sup> The accused, thereafter, filed a petition for review of the resolution of the public prosecutor before the DOJ on January 7, 2002.<sup>[17]</sup> They also filed a motion to suspend proceedings and the issuance of warrants of arrest in Criminal Cases Nos. 01-0425 and 01-0921 and a motion to admit newly discovered evidence, namely, Azarcon's affidavit of recantation.<sup>[18]</sup> The public prosecutor opposed the motion and filed a motion to admit second amended information with Pedro Jimenez as additional accused.<sup>[19]</sup> On February 5, 2002, the trial court issued an Order denying the motion of the accused Castillo brothers and Bunda and ordering the issuance of warrants for the arrest of Santos and Cortez.<sup>[20]</sup> The court then issued the said warrants based on its finding of probable cause against them<sup>[21]</sup> for lack of probable cause to recall the warrants of arrest, and to examine the witnesses. The court, however, denied the motion on the ground that it had not yet acquired jurisdiction over their persons and it had not yet received any resolution from the Secretary of Justice on their petition for review. On February 20, 2002, the trial court issued an Order denying the petition for bail by Tonion and Soriano,<sup>[22]</sup> ruling that the evidence of guilt was strong. In the meantime, Ernesto and Dennis recanted their affidavits.<sup>[23]</sup>

During the trial on April 23, 2002 in Criminal Case No. 01-0425, accused Tonion and Soriano presented Dennis as their witness.<sup>[24]</sup>

On April 26, 2002, the trial court issued an Order admitting the second amended Information against the Castillo brothers, Bunda, and Jimenez and ordering the issuance of warrants for their arrest.<sup>[25]</sup> On April 29, 2002, the said warrants were issued by the court.

On June 11, 2002, Secretary of Justice Hernando B. Perez issued a Joint Resolution reversing the assailed resolution of the public prosecutor and directing the latter to withdraw the Informations against Santos, Cortez, Bunda, the Castillo brothers, and Jimenez. The Secretary of Justice found Azarcon, Frias, Dennis, and Ernesto incredible witnesses because of their recantations, to wit:

**WHEREFORE**, the petition is **GRANTED** and the assailed resolutions are hereby **REVERSED AND SET ASIDE**. The City Prosecutor of Parañaque City is hereby directed to cause the withdrawal of the criminal Informations for murder filed before the Regional Trial Court, Branch 258,

Parañaque City, against respondents LIGAYA SANTOS, EDNA CORTEZ and RONNIE YBAÑEZ (I.S. No. 01-F-2052) and against respondents CHRISTOPHER and GIRLIE CASTILLO and ROBERT BUNDA (I.S. No. 01-H-3410) and to report to this Department the action taken within ten (10) days from receipt hereof.

**SO ORDERED.**<sup>[26]</sup>

On June 27, 2002, the respondent filed a motion for reconsideration thereof. However, the public prosecutor filed a motion to withdraw the Informations in the two cases on June 20, 2002 in compliance with the joint resolution of the Secretary of Justice. On July 2, 2002, the respondent filed a comment/opposition to the motion to withdraw the Informations filed by the public prosecutor, contending:

- I- THAT COMPLAINANT HEREBY ADOPTS ITS POSITION RAISED IN ITS MOTION FOR RECONSIDERATION FILED WITH THE DEPARTMENT OF JUSTICE (COPY ATTACHED AS ANNEX "A"). HENCE, THE DETERMINATION OF THE INSTANT MOTION IS STILL PREMATURE ESPECIALLY SO THAT ALL THE ACCUSED-MOVANTS ARE STILL AT LARGE, EVADING SERVICE OF ARREST WARRANT, IN WHICH CASE THEY ARE NOT ENTITLED TO ANY RELIEF;
- II- THAT THE LATE (*SIC*) FINDINGS OF NO PROBABLE CAUSE FOR THE ACCUSED BY THE DEPARTMENT OF JUSTICE IS NOT BINDING;
- III- THAT THE HONORABLE COURT HAS JUDICIOUSLY AND SOUNDLY ADJUDGED THE EXISTENCE OF PROBABLE CAUSE; and,
- IV- THAT TO GIVE DUE COURSE TO THE INSTANT MOTION WOULD ONLY CREATE CHAOS AND INJUSTICE.<sup>[27]</sup>

Pending resolution of the motion for reconsideration, the trial court issued an Order on July 5, 2002 granting the motion of the public prosecutor to withdraw the Informations in the interest of justice and equity.<sup>[28]</sup> The trial court ruled that such withdrawal would not prevent the refile of the Informations against the accused who would not be able to invoke double jeopardy, considering that the court had not yet acquired jurisdiction over their persons. The private complainant filed a motion for reconsideration of the order which was not opposed by the public prosecutor. Nonetheless, on July 23, 2002, the trial court issued an Order denying the motion on the ground that it could not order the refile of the Informations if the DOJ and the public prosecutor refused to do so.<sup>[29]</sup>

The respondent forthwith filed a petition for certiorari with the Court of Appeals (CA) assailing the orders of the trial court.

On March 19, 2003, the CA rendered a Decision granting the petition. The appellate

court ruled that the trial court abused its discretion in granting the withdrawal of the Informations without making an independent evaluation on the merits of the case. Santos filed a motion for reconsideration of the decision and a supplement to the said motion, which was opposed by the respondent. On May 6, 2003, Santos and Cortez were arrested based on the warrants issued by the trial court. On May 22, 2003, the CA issued a resolution denying the said motion for reconsideration for lack of merit.

Santos filed a petition for review on *certiorari* with this Court contending as follows:

- A.) THE COURT OF APPEALS ERRED GRAVELY AND ACTED ARBITRARILY IN NULLIFYING THE ORDER OF THE TRIAL COURT GRANTING THE PROSECUTION'S MOTION TO WITHDRAW THE INFORMATIONS IN CRIMINAL CASES NOS. 01-0921 AND 01-0425 PURSUANT TO DOJ JOINT RESOLUTION DATED 11 JUNE 2002.
- B.) THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DIRECTLY REINSTATING THE CRIMINAL COMPLAINTS, INCLUDING THE WARRANTS OF ARREST, WITHOUT AFFORDING THE TRIAL COURT THE OPPORTUNITY TO EXERCISE ITS JUDICIAL PREROGATIVE OF DETERMINING WHETHER TO PURSUE OR DISMISS THE COMPLAINTS PURSUANT TO ITS OWN EVALUATION OF THE CASE AND EVIDENCE IN LIGHT OF THE DOJ JOINT RESOLUTION FINDING LACK OF PROBABLE CAUSE. [30]

The threshold issue is whether or not the trial court committed grave abuse of its discretion amounting to excess or lack of jurisdiction in granting the public prosecutor's motion to withdraw the Informations and in lifting the warrant of arrest against the petitioner on the Secretary of Justice's finding that there was no probable cause for the filing of the said Informations.

The petitioner avers that the trial court did not abuse its judicial discretion when it granted the motion of the public prosecutor to withdraw the two Informations as ordered by the Secretary of Justice in his Joint Resolution on the finding that there was no probable cause against the accused therein to be charged with murder. The petitioner asserts that, by allowing the withdrawal of the Informations without an independent assessment of the merit of the evidence and without prejudice to the refiling thereof, the court did not thereby order the dismissal of the cases for insufficiency of evidence. The petitioner posits that, after all, the trial court had not yet acquired complete criminal jurisdiction to resolve the cases because it had not yet acquired jurisdiction over the persons of all the accused. The petitioner argues that the CA erred in relying on the rulings of this Court in *Crespo v. Mogul* [31] and *Perez v. Hagonoy Rural Bank, Inc.* [32] because the said cases involve the withdrawal of the Informations and the dismissal of the cases for insufficiency of evidence. In contrast, the public prosecutor filed a motion merely to withdraw the Informations and not to dismiss the cases due to insufficiency of evidence.

In its comment on the petition, the Office of the Solicitor General (OSG) avers that the decision of the CA is in conformity with the rulings of this Court in *Balgos, Jr. v. Sandiganbayan*, [33] *Dee v. Court of Appeals*, [34] *Roberts, Jr. v. Court of Appeals*, [35]