

SECOND DIVISION

[G.R. No. 129874, December 27, 2002]

**JOAN M. FLORES, PETITIONER, VS. HON. FRANCISCO C. JOVEN,
PRESIDING JUDGE OF BRANCH 29, REGIONAL TRIAL COURT,
BISLIG, SURIGAO DEL SUR, AND EMMANUEL NAVARRO,
RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a special civil action for certiorari under Rule 65 of the Rules of Court filed by complainant Joan M. Flores assailing the Order dated March 4, 1997 issued by the Regional Trial Court of Bislig, Surigao del Sur (Branch 29) in Criminal Case No. 1736-B, granting respondent-accused Emmanuel Navarro's Motion to Quash the Amended Information, and the Order dated May 6, 1997, denying petitioner's motion for reconsideration.^[1]

The factual background of the case is as follows:

On January 23, 1996, petitioner caused the filing of a criminal complaint for Rape against respondent Navarro and nine other persons, namely, Alex Tañag, Ramil Toledo, Benjie Pasukin, Marcial Plaza, Jr., Rodulfo Codira alias "Babie", Robert Piodo, Daniel Equibal, Judy Duron and Jorge Azaria, as principals by direct participation.^[2] After preliminary investigation, an Information dated June 14, 1996 was filed with the trial court, accusing Navarro and his other co-accused of the crime of Rape, docketed as Criminal Case No. 1736-B.

On October 18, 1996, before all the accused can be arraigned, Navarro filed a motion to dismiss the complaint in Criminal Case No. 1736-B on the ground that it does not sufficiently describe the crime of rape in any of its forms under Article 335 of the Revised Penal Code.^[3] On October 23, 1996, the trial court issued an order re-setting the arraignment as the prosecution intends to file several other cases of rape against the accused.^[4]

On November 27, 1996, an Amended Information for Rape was filed in Criminal Case No. 1736-B against Navarro, as the principal accused, committed as follows:

"That on or about the hours from 8:30 o'clock to 11 o'clock in the evening of January 18, 1996 at Purok 7, Gordonas Village, John Bosco District, Barangay Mangagoy, Municipality of Bislig, Province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, "the above-named accused, conspiring, confederating and mutually helping each other for a common purpose, with lewd and unchaste designs, and by means of force, did then and there willfully, unlawfully and feloniously (sic) to wit: accused EMMANUEL NAVARRO has(sic) sexual intercourse with one Joan Flores, against the latter's will, while

accused Alex Tanag, Ramil Toledo, Benjie Pasokin y Madis, Marcial Plaza, Jr. y Cubil, Rodulfo Codira alias Babie, Roberto Plodo y Ampalayo, Daniel Equibal y Degorio, Judy Doron y Quita and Jorge Azaria y Tino held the victim and stood as guard, to the damage and prejudice of the afore-said Flores.

"CONTRARY TO LAW: In violation of Article 355 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659)"^[5]

Similar Informations for Rape were likewise filed against the other accused, except Judy Duron, docketed as Criminal Cases Nos. 1795-B, 1796-B, 1797-B, 1798-B, 1799-B, 1800-B, 1801-B and 1802-B, the only difference being that the accusatory portion of each Information individually named each of them as principal in committing the crime of rape while the other co-accused held the victim and stood as guard.

Respondent Navarro then filed a motion to quash the Amended Information in Criminal Case No. 1736-B on the grounds that: (1) the Amended Information does not comply with the Order dated October 23, 1996; (2) the allegations in the Amended Information is in conflict with petitioner's affidavit in that the Amended Information named respondent Navarro as the only one who had intercourse with petitioner while her affidavit mentioned only Rodulfo Codira alias "Babie" as the culprit; and (3) the Amended Information does not sufficiently describe the event on the night of January 18, 1996.^[6]

On March 4, 1997, the trial court issued the assailed Order granting the motion to quash, finding that Navarro was not one of those identified by petitioner to have abused her, and that the Information failed to show his particular participation in the crime.^[7] Navarro, however, was not released from detention as Criminal Cases Nos. 1795-B to 1802-B were still pending.

Petitioner filed a motion for reconsideration but the trial court per Order dated May 6, 1997 denied the same.^[8]

Hence, petitioner, through her private prosecutors, filed the instant special civil action for certiorari.

Meanwhile, Navarro's other co-accused were arraigned and pleaded "not guilty" to the charges against them. Trial commenced as regards their respective cases.^[9]

On October 3, 1998, Navarro escaped from detention^[10] and has remained at large per manifestation of his counsel in his "Memorandum for the Respondents" filed with this Court on November 5, 1999.^[11]

On November 25, 1998, before the prosecution could present its evidence, it filed a motion to withdraw the respective Informations against the six principal accused in Criminal Cases Nos. 1795-B, 1796-B, 1797-B, 1798-B, 1800-B and 1801-B for insufficiency of evidence.^[12] The motion was granted by the trial court in its Order dated November 26, 1998, but the other accused whose cases were withdrawn remained as co-accused in Criminal Cases Nos. 1736-B (against Navarro), 1799-B (against Rodulfo Codira) and 1802-B (against Jorge Azaria).^[13]

On September 1, 1999, the Court gave due course to herein petition and required the parties to submit their respective memoranda.^[14]

Petitioner argues:

"9.a that during the clarificatory hearing conducted in the course of the preliminary investigation of the case by the Provincial Prosecutor's Office, respondent/accused Navarro was identified as one of those nine (9) persons who sexually abused petitioner, the latter upon seeing respondent, spontaneously cried and declared, right then and there, that he was even the one who burned her hand;

"9.b that on the alleged ground of *insufficiency of the information* (i.e., the facts charged do not constitute an offense because it failed to state with particularity respondent/accused Navarro's participation in the act complained of), public respondent should have realized that to resolve the issue, he need only determine whether the 'facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined by law';"^[15]

Respondent, on the other hand, contends that the private prosecutors who initiated the instant petition have no personality to file the same as it is vested with the public prosecutors,^[16] and that the assailed order of the trial court finds support in the records of the case as petitioner herself testified during preliminary investigation that she became unconscious after she was sexually abused by Rodolfo Codira alias "Babie" and she did not know who took turns in abusing her.^[17]

Anent the issue whether or not the petitioner has the personality or the right to file herein petition for certiorari – We rule in the affirmative. A perusal of the petition filed in this case shows that petitioner herself caused the preparation and filing of the present petition and filed the same through the private prosecutor^[18]. It is beyond question that petitioner has the right or personality to file the petition, through her private prosecutors, questioning the dismissal of the criminal case against respondent Navarro. For obvious reasons, the public prosecutors who filed the motion to dismiss which was granted by the trial court would not initiate the action.

As early as 1969 in the case of ***Paredes vs. Gopengco***,^[19] it was already held that the offended party in a criminal case has sufficient interest and personality as a "person aggrieved" to file a special civil action of prohibition and certiorari under Rule 65 of the Rules of Court in line with the underlying spirit of the liberal construction of the rules in order to promote its object.

Later, in ***Mosquera vs. Panganiban***,^[20] we recognized the right of offended parties to appeal an order of the trial court which deprives them of due process, subject to the limitation that they cannot appeal any adverse ruling if to do so would place the accused in double jeopardy. Citing ***Martinez vs. Court of Appeals***,^[21] we held:

"Under Section 2, Rule 122 of the 1988 Rules of Criminal Procedure, the right to appeal from a final judgment or order in a criminal case is

granted to 'any party,' except when the accused is placed thereby in double jeopardy.

"In *People v. Guido*, [57 Phil. 52 (1932)] this Court ruled that the word 'party' must be understood to mean not only the government and the accused, but also other persons who may be affected by the judgment rendered in the criminal proceeding. Thus, the party injured by the crime has been held to have the right to appeal from a resolution of the court which is derogatory to his right to demand civil liability arising from the offense. The right of the offended party to file a special civil action of prohibition and certiorari from an [interlocutory] order rendered in a criminal case was likewise recognized in the cases of *Paredes v. Gopengco* [29 SCRA 688 (1969)] and *People v. Calo, Jr.*, [186 SCRA 620 (1990)] which held that 'offended parties in criminal cases have sufficient interest and personality as 'person(s) aggrieved' to file the special civil action of prohibition and certiorari under Sections 1 and 2 of Rule 65 in line with the underlying spirit of the liberal construction of the Rules of Court in order to promote their object. . . ."

More recently, in ***Perez vs. Hagonoy Rural Bank, Inc.***,^[22] we held that the private respondent therein, as private complainant, has legal personality to assail the dismissal of the criminal case against the petitioner on the ground that the order of dismissal was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.^[23] This is so because a special civil action for certiorari may be filed by the persons aggrieved, which, in a criminal case, are the State and the private offended party or complainant. Having an interest in the civil aspect of the case, the complainant may file such action, in his name, questioning the decision or action of the respondent court on jurisdictional grounds.^[24]

We further ruled in the ***Perez case*** that while it is only the Office of the Solicitor General that may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or the State in criminal proceedings pending in the Supreme Court or the Court of Appeals, the private offended party retains the right to bring a special civil action for certiorari in his own name in criminal proceedings before the courts of law.^[25]

Finally, double jeopardy does not apply. The requisites that must be present for double jeopardy to attach are: (a) a valid complaint or information; (b) a court of competent jurisdiction; (c) the accused has pleaded to the charge; and (d) the accused has been convicted or acquitted or the case dismissed or terminated without the express consent of the accused.^[26] The third requisite is not present in the instant case. Private respondent Navarro has not been arraigned.^[27]

The next issue to be resolved is whether or not the writ of certiorari should issue in this case. Again, we rule in the affirmative. The trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in quashing the Information filed against Navarro in Criminal Case No. 1736-B.

First, contrary to the finding of the trial court, the records of this case adequately show that respondent Navarro was identified as one of those who sexually abused petitioner. In her Sworn Statement executed on January 23, 1996 before MCTC Judge Antonio K. Cañon, petitioner, while admitting that it was only Rodolfo Codira