

SECOND DIVISION

[G.R. No. 131106, December 07, 2001]

**EUGENE YU, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

QUISUMBING, J.:

For review is the decision^[1] of the Court of Appeals rendered on February 19, 1997, in CA-G.R. SP No. 42208, and its resolution^[2] dated October 15, 1997, denying the motion for reconsideration. In the said decision, the appellate court set aside the order dated December 8, 1995 of Regional Trial Court, Branch 18 of Tagaytay City, in Criminal Cases Nos. TG-2395-94, TG-2395-94-A and TG-23-96-94. The dispositive portion of the assailed decision of the Court of Appeals states:

WHEREFORE, the Order dated December 8, 1995 of respondent Judge Hon. Eleuterio F. Guerrero directing the prosecution to amend the information so as to charge accused Eugene Yu as an accomplice and the Order dated February 6, 1996 denying prosecution's and petitioner's Motion for Reconsideration are hereby SET ASIDE.

The Order of December 8, 1995 is hereby AFFIRMED insofar as it dismisses the cases against Col. Abelardo Abad.

SO ORDERED.^[3]

The said RTC Order dated December 8, 1995, which was set aside by the Court of Appeals, reads:

WHEREFORE, in the light of the foregoing, this Court finds that probable cause exists against accused Eugene Yu as an accomplice in the instant cases, and the prosecution is accordingly directed to amend the informations filed in these cases for the inclusion of the same accused as an accomplice within ten (10) days upon receipt of a copy hereof. As a consequence, let a warrant for the arrest of Eugene Yu be issued in these cases and bail for his provisional liberty is hereby fixed at P60,000.00 each in these cases.

For lack of probable cause against Col. Abelardo Abad as an accessory in Crim. Cases Nos. TG-2395-94 and TG-2395-94-A, let the charges against the same accused be as they are hereby ordered dismissed, with costs de-officio.

Finally it appearing that the incident pending before the appellate court has been finally resolved in so far as accused Pedro Lim's petition is concerned, let the arraignment of all the accused in these cases be set by

the Clerk of this Court on a date convenient to this Court's calendar, preferably sometime in January, 1996 at 8:30 o'clock in the morning.

The Clerk of this Court is further directed to issue notices of arraignment to all the accused and their respective counsels of record.

SO ORDERED.^[4]

The antecedent facts, as culled from the records, are as follows:

On November 14, 1994, Atty. Eugene Tan, former National President of the Integrated Bar of the Philippines, and his driver, Eduardo Constantino, were abducted by several men in Alabang, Muntinlupa, Metro Manila. Three days after, their bodies were found in Barangay Malinta, Sampaloc 2, Dasmariñas, Cavite.

Thereupon, the Presidential Anti-Crime Commission (PACC) investigated the abduction and killing of Tan and Constantino. Consequently, the PACC filed with the Department of Justice (DOJ) a complaint against the following: Pedro Lim, Bonifacio Roxas, Eugene Yu (herein petitioner), Patricia Lim-Yu, Sgt. Edgar Allan Abalon, Capt. Alfred Abad,^[5] Reynaldo Delos Santos *alias* "Engine", Rudy Ochoa,^[6] Toto Mirasol, Venerando Ozores *alias* "Benny", Mariano Hizon, Eugene Hizon, and others who were unidentified. The complaint was docketed as I.S. No. 94-557.

On November 29, 1994, the accused received a subpoena directing them to appear for preliminary investigation and to submit their counter-affidavits. On December 1, 1994, the accused submitted their counter-affidavits. However, the PACC submitted additional evidence to support its complaint consisting of the sworn statements of Enriqueta Hizon, Alfonso Chua, Macario Lim and accused Sgt. Edgar Allan Abalon. All the other accused were then given additional time to submit their supplemental counter-affidavits.

On December 2, 1994, the investigating panel issued a partial resolution based on the evidence initially submitted. It found probable cause against Pedro Lim and Bonifacio Roxas. An information was thereafter filed against them with the Regional Trial Court of Tagaytay City.

On December 12, 1994, Pedro Lim and Patricia Lim-Yu, instead of filing their supplemental counter-affidavit, filed a motion to inhibit the members of the investigating panel on the ground of partiality in favor of PACC. The investigating panel, however, considered the case submitted for resolution despite the unresolved motion filed by Lim and Lim-Yu.

On December 13, 1994, the investigating panel rendered an amended and supplemental resolution finding probable cause against Pedro Lim, Bonifacio Roxas, Capt. Alfredo Abad, Reynaldo Delos Santos, Rodolfo Ochoa, Toto Mirasol, Venerando Ozores, Mariano Hizon and Eugene Hizon. However, the complaint against petitioner and Patricia Lim-Yu was dismissed for lack of sufficient evidence to establish probable cause.

One year later, on December 15, 1994, three amended informations were filed against accused Pedro Lim, Bonifacio Roxas, Capt. Alfredo Abad, Reynaldo Delos Santos (at-large), Rodolfo Ochoa (at-large), Toto Mirasol, Venerando Ozores,

Mariano Hizon and Eugenio Hizon.

Meanwhile, accused Reynaldo Delos Santos and Rodolfo Ochoa surrendered to the authorities. Thus, the PACC were able to obtain extra-judicial confessions from the two, who pointed to Pedro Lim and petitioner Eugene Yu as the masterminds in the abduction and killing of Atty. Eugene Tan and Eduardo Constantino. They also detailed the participation of Capt. Alfredo Abad and Major Lazaro Gammad. Col. Abelardo Abad, brother of Capt. Alfredo Abad, was likewise implicated as an accessory to the crime.

On December 26, 1994, petitioner Eugene Yu and Col. Abelardo Abad were again issued a subpoena to appear on January 6, 1995, and to submit their counter-affidavits in I.S. No. 94-614 entitled "*PACC TF Cabakid, et al. vs. Eugene Yu, Col. Abelardo Abad and Major Lazaro Gammad*". Petitioner instead filed a motion to dismiss on the following grounds: (1) that the "case" was fatally defective in the absence of any complaint and accompanying affidavit of the complainant; (2) that the instant case was actually a revival of I.S. No. 94-557 which cleared them from the charges for insufficiency of evidence; and (3) that the alleged "new evidence" was inadmissible in evidence and failed to establish probable cause against him.

Nonetheless, the investigating panel issued a resolution^[7] on January 27, 1995, finding probable cause against petitioner as principal and Col. Abelardo Abad as an accessory to the crime of kidnapping with murder. However, the complaint against Major Lazaro Gammad was dismissed for insufficiency of evidence. Accordingly, on January 30, 1995, an amended information to include the names of petitioner Eugene Yu and Col. Abelardo Abad as additional accused was filed with the RTC of Tagaytay City.^[8]

On January 30, 1995, petitioner filed an "Omnibus Motion to Determine Probable Cause, to Deny Issuance of Warrant of Arrest and to Quash Information," raising basically the same grounds he had cited in his earlier motion to dismiss before the investigating panel.

On December 8, 1995, the RTC of Tagaytay City issued an order directing the amendment of the information by reclassifying the participation of Eugene Yu from principal to accomplice and dismissing the charge against Col. Abelardo Abad. The prosecution filed a motion for reconsideration which was denied. The order of denial was received by the prosecutor's office on February 8, 1996.^[9]

On October 14, 1996, the Solicitor General filed with the Court of Appeals a petition for certiorari to annul the aforesaid order issued by the trial court, it being tantamount to usurpation of the exclusive functions of the prosecutor. On review, the Court of Appeals annulled the aforesaid order of the trial court. Petitioner filed a motion for reconsideration which was denied. Hence, the instant petition.

Before us, petitioner now alleges that:

4.1 THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN NOT DISMISSING RESPONDENT'S PETITION FOR CERTIORARI FOR BEING TIME BARRED;

4.2 THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A