

SECOND DIVISION

[G.R. No. 125796, December 27, 2000]

OFFICE OF THE PROVINCIAL PROSECUTOR OF ZAMBOANGA DEL NORTE, PETITIONERS, VS. COURT OF APPEALS, ATICO ABORDO, JUDY CATUBIG, PETER MOLATO, AND FLORENCIO CANDIA, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

The issue in this case is whether, even before the start of trial, the prosecution can be ordered to change the information which it had filed on the ground that the evidence presented at the preliminary investigation shows that the crime committed is not murder with multiple frustrated murder, but rebellion. The trial court ruled that the power to determine what crime to charge on the basis of the evidence gathered is the prerogative of the public prosecutor. The Court of Appeals, however, while agreeing with the trial court, nevertheless found the prosecutor to have gravely abused his discretion in charging murder with frustrated murder on the ground that the evidence adduced at the preliminary investigation shows that the crime committed was rebellion. Accordingly, it ordered the prosecutor to substitute the information filed by him. Hence, this petition brought by the provincial prosecutor of Zamboanga del Norte for a review of the decision of the Court of Appeals.

The facts are not in dispute. On August 3, 1993, the provincial prosecutor of Zamboanga del Norte^[1] filed with the Regional Trial Court, Branch 8, Dipolog City, an information (docketed as Criminal Case No. 6427) charging private respondents and 10 other individuals with murder and multiple frustrated murder. The information reads:

The undersigned, Provincial Prosecutor, accuses ATICO OBORDO alias "Dondoy," NACENCIANO PACALIUGA, JR., ELEAZAR FLORENDO, NESTOR BASES alias "Beses/Belly," FLORENCIO CANDIA alias "Bimbo," JUDY CATUBIG alias "Elboy/Al," PETER MOLATO alias "Joker," ALBERTO CATUBIG alias "Blacky", ALMARIO CATUBIG alias "Nixon," JIMMY DENGAL alias "Macboy," ENRICO SIMBULAN alias "Monstop," JIMMY GARIG alias "Nonoy," NILO CATUNGAN alias "Gino," and BERNIDO QUENECAS alias "Digoy" of the crime of MURDER WITH MULTIPLE FRUSTRATED MURDER, committed as follows:

That, in the morning, on or about the 1st day of May, 1988, in the municipality of Katipunan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused armed with high caliber firearms, conspiring, confederating together and mutually helping one another and with intent to kill by means of treachery and evident

premeditation did then and there wilfully, unlawfully, unlawfully and feloniously attack, assault and fire several shots to one Cpl. ALFREDO DELA CRUZ PA, which caused his instantaneous death and causing injuries to the following victims namely: SGT. RODRIGO ALVIAR PA, SGT. RODRIGO BARADI PA, SGT. LINOGAMAN PIATOS and SGT. BELLIZAR PA, which injuries would ordinarily cause their death; thus performing all the acts of execution which would have produced the crime of MURDER, as a consequence, but which nevertheless did not produce it for reason of causes independent of the will of the herein accused, that is the timely and able medical attendance rendered to the said victims which prevented their death; that as a result of the commission of the said crime the heirs of Cpl. Alfredo de la Cruz and the herein victims suffered the following damages, vis:

On victim CPL ALFREDO DELA CRUZ:

a) Indemnity for victim's death . . P50,000.00

b) Loss of earning capacity 30,000.00

P80,000.00

SGT. RODRIGO ALVIAR:

a) Hospitalization P 10,000.00

b) Loss of earning capacity 10,000.00

P20,000.00

SGT. LINOGAMAN PIATOS:

a) Hospitalization P10,000.00

b) Loss of earning capacity. 10,000.00

P20,000.00

SGT. RODRIGO BARADI:

a) Hospitalization P10,000.00

b) Loss of earning capacity. 10,000.00

P20,000.00

SGT. BELLIZAR:

a) Hospitalization P10,000.00

b) Loss of earning capacity. 10,000.00

P20,000.00

CONTRARY TO LAW (Viol. of Art. 248, in relation to Art. 48 of the Revised Penal Code), with the aggravating circumstance of superior strength and with the qualifying circumstances of treachery and evident premeditation.

[2]

The foregoing information is based on a joint affidavit executed on June 1, 1993 by five individuals, who claimed to be former members of the New People's Army (NPA), before the Municipal Trial Court of Katipunan, Zamboanga del Norte. The affiants stated that on May 1, 1988, their group, which included private respondents, figured in an armed encounter with elements of the Philippine Army in Campo Uno, Femagas, Katipunan, Zamboanga del Norte, as a result of which one soldier, Cpl. Alfredo de la Cruz, was killed while four others, Sgts. Rodrigo Alviar, Linomagan Piatos, Rodrigo Baradi, and a certain Bellizar, were seriously wounded. Although private respondents did not appear nor submit affidavits in the preliminary investigation, they appealed the resolution of the provincial prosecutor to the Secretary of Justice on the ground that, in accusing them of murder and multiple frustrated murder, the provincial prosecutor disregarded the political motivation which made the crime committed rebellion. When the case was filed in court, private respondents reiterated their contention and prayed that the provincial prosecutor be ordered to change the charge from murder with multiple frustrated murder to rebellion.

On September 29, 1995, the trial court issued an order denying private respondents' motion for the correction or amendment of the information. The trial court said: [3]

Be it recalled, that as pointed out by the Asst. Provincial Prosecutor, the same movant counsel sometime on July 22, 1993 filed a notice of appeal assailing the resolution of the provincial prosecutor dated July 16, 1993 finding probable cause against all the above-named accused for the crime of Murder and Multiple frustrated Murder, to the Honorable Secretary of Justice, by raising the same issue that "instead of recommending the filing of a political crime such as subversion or rebellion, the investigating prosecutor is recommending the filing of the common crime of murder to cover-up the apparent political color of the alleged crime committed." Until the appeal by the movant therefore is resolved by the Secretary of Justice, this court will have no basis to order the public prosecutor to amend or change the crime charged in the information. Besides, this Court recognizes and respects the prerogative of the fiscal to determine whether or not a prima facie case exists in a given case against the accused. This power vested in the fiscal cannot be interfered with even by the courts.

But since the case has already been filed with this Court, jurisdiction thereover now lies with the court. It may not even be bound by the ruling of the Secretary of Justice. . . .

Private respondents twice moved for a reconsideration and twice were rebuffed. They then filed a petition for *certiorari* with this Court to set aside the orders dated September 29, October 24, and November 3, 1995 of the trial court. They impleaded the provincial prosecutor of Zamboanga del Norte as co-respondent of

Judge Pacifico Garcia of the Regional Trial Court, Branch 8, Dipolog City.

Without ruling on the petition, this Court referred the case to the Court of Appeals which, in a decision^[4] dated July 24, 1996, the subject of this review, found the provincial prosecutor guilty of grave abuse of discretion in charging private respondents with murder with multiple frustrated murder. The Court of Appeals held:

The New People's Army (NPA) is the armed component of the Communist Party in this country called the National Democratic Front (NDF). The ultimate objective of the NPA/NDF is to overthrow the constitutional democratic Philippine Government and supplant it with a government anchored on the communist ideology.

It is common practice of the military and police to charge captured or arrested members of the NPA with capital offenses like murder, robbery with homicide, illegal possession of firearms used in the commission of homicide or murder, arson resulting in death rather than on simple rebellion.

If an NPA fighter (terrorist, according to the military lexicon) commits homicide, murder, arson, robbery, illegal possession of firearms and ammunition in furtherance or on the occasion of his revolutionary pursuit, the only crime he has committed is rebellion because all those common crimes are absorbed in the latter one pursuant to the ruling in *People v. Hernandez*, 99 Phil. 515 and several subsequent cases.

The reason why instead of charging the NPA fighter with capital offenses mentioned supra and not the proper offense of rebellion is obvious. Rebellion is a bailable offense and given the resources of the NPA, it is the easiest thing for it to bail out its members facing rebellion charges in court. Once out, the NPA fighter goes back to his mountain lair and continues the fight against the government. If he is accused of a capital offense where the granting of bail is a matter of discretion, his chances of securing provisional liberty during the pendency of the trial are very much lessened.

Since, the military and the police carry the brunt of fighting the NPAs and in so doing they put their limbs and lives on the line, it is easy for Us to understand why they usually charge the captured or arrested NPAs with capital offenses instead of the proper offense which is rebellion. The police or military practice is of course wrong, but it is not much of a problem because it is at most recommendatory in nature. It is the prosecutory service that ultimately decides the offense to be charged.

. . . .

No one disputes the well-entrenched principle in criminal procedure that the public prosecutor has the discretion to determine the crime to be charged in a criminal action. But like all discretions, his must be exercised soundly, meaning, reasonably, responsibly, and fairly. As stated by the Supreme Court in *Misola v. Panga* cited in respondents' Comment

(p. 61, Rollo); "The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information must be supported by the facts brought about by an inquiry made by him." (underscoring supplied).

If then, a public prosecutor deliberately ignores or suppresses an evidence in his hands which palpably indicates the chargeable offense and files an information charging a more serious one, he departs from the precinct of discretion and treads on the forbidden fi[el]d or arbitrary action.

This was what happened in the case at bench. The evidentiary bases of the criminal action against petitioners are the Joint Affidavit and the recorded testimony earlier adverted to. It is not at all disputed that based upon these two documents, the proper offense to charge petitioners with is rebellion. No amount of legalistic sophistry can make those documents support murder with multiple frustrated murder for these offenses in the factual milieu in this case were all absorbed by rebellion.

We vehemently reject respondents' contention that the petitioners do not suffer any prejudice because they can use their theory that the chargeable offense is only rebellion as a defense in the trial on the merits and if the trial court finds that the evidence establishes only rebellion, then, it can convict them under the Information for just that lesser crime. This argument is not only wrong but betrays an insensitivity to violation of human rights. If prosecutory discretion is twisted to charge a person of an unailable offense and, therefore, keeps him under detention when the truly chargeable offense is aailable one, the prosecutor transgresses upon the human rights of the accused.^[5]

The appeals court was more kindly disposed toward the trial court. It said:

Respecting the respondent court, the situation is different. . . .

. . .

[T]he Joint Affidavit and the recorded testimony mentioned earlier are not part of the records. The trial has not yet been started and, therefore, no evidence has yet been adduced. There is no basis then for the trial court even to call the attention of the prosecutor to a mistake in the crime charged.

We hold that respondent court did not commit an error in issuing the assailed orders, mu[ch] less gravely abuse[d] its discretion in issuing them.^[6]

Accordingly, the Court of Appeals ordered:

WHEREFORE, with the foregoing premises, We a) dismiss the petition as against respondent court for lack of merit; and b) order the respondent office of Provincial Prosecutor to file a substitute Information in Criminal Case No. 6427 charging the petitioners with rebellion only.^[7]