

TWENTIETH DIVISION

[CA- G.R. SP NO. 08298, January 12, 2015]

**MDA^[1], REPRESENTED BY MANUEL DE ASIS PETITIONER, VS.
HON. LEILA M. DELIMA, IN THE CAPACITY AS SECRETARY OF
JUSTICE OF THE DEPARTMENT OF JUSTICE OF MANILA, LUCITA
OCON, SPOUSES LELIOSO VILLAFUERTE AND BEATRIZ
VILLAFUERTE, RESPONDENTS.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This petition for certiorari under Rule 65 of the Rules of Court seeks the annulment of two Resolutions dated May 23, 2011^[2] and December 3, 2013^[3] ("assailed Resolutions") issued by the Department of Justice, in I.S. Case No. 08-91, through Prosecutor General Claro A. Arellano and the Secretary of Justice Leila M. Delima, respectively, ("public respondent") for being tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction. The May 23, 2011 Resolution of public respondent DOJ denied herein petitioner's petition for review filed before the former questioning the resolution of the Office of the Provincial Prosecutor, who found no probable cause to indict herein private respondents for the crimes of trespassing and less serious physical injuries in relation to Republic Act (R.A. No. 7610) or the Anti-Child Abuse Law. Meanwhile, the December 3, 2013 Resolution denied petitioner's Motion for Reconsideration.

The antecedent facts of the case are as follows:

The evidence of herein petitioner tends to show that at about 11:00 o'clock in the morning of July 26, 2008, Manuel De Asis, petitioner MDA's father, had just arrived from his work when he saw Lelioso Villafuerte in front of the yard of his house at Brgy. Hilusig, Mahaplag, Leyte. Lelioso was with his wife Beatriz Villafuerte and a public school teacher named Lucita Ocon. The three private respondents, at that time, were looking for MDA.

Manuel then asked why the three, Lelioso, Beatriz, and Lucita, were looking for his daughter, and he was informed by the three that his daughter MDA stole from them Two Hundred Pesos (P200.00). So, Manuel went inside his house and found MDA hiding under their bed. Manuel then asked MDA to come out under the bed which the latter heeded.

As soon as MDA crawled out from under the bed, Lelioso pulled her and took her to the sala, and there, Lelioso, Beatriz and Lucita ganged up on MDA. Lelioso held MDA while Beatriz took a hammer and hammered MDA's fingers, and Lucita, all the while, pinched MDA's ear and banged her head.

Out of respect to his neighbors, the spouses Lelioso and Beatriz and Lucita, who

happened to be his godmother, and out of shame of the reported act of his daughter, Manuel claimed that he could not do anything to prevent the harm that was being inflicted on his daughter.

The affidavit of Manuel^[4] was corroborated by MDA's own affidavit^[5], and by the affidavit of MDA's siblings^[6]. Manuel also presented as evidence a medical certificate^[7] showing the injuries received by his daughter MDA and a police blotter^[8] showing that they reported the incident to the police.

On the other hand, private respondents' evidence, composed of their affidavits and of some children who allegedly witnessed the incident, tends to show that Lelioso, Beatriz, and Lucita were not the ones who maltreated MDA but it was Manuel himself. Their affidavits stated that when Manuel learned of MDA's alleged act of stealing money from Lelioso, Beatriz and Lucita, it was he himself who castigated and beat MDA which resulted in the latter's injury.^[9]

After preliminary investigation, the Office of the Provincial Prosecutor, through the investigating prosecutor, found no probable cause to indict herein private respondents of the crimes they allegedly committed, that is, trespassing and less serious physical injuries in relation to violation of R.A. No. 7610. The investigating prosecutor held that the testimony of Manuel and the affidavits of other witnesses for the petitioner were inconsistent, incredible, and implausible. He reasoned that it is beyond ordinary human experience that Manuel could not do anything upon seeing the maltreatment done to his own daughter, and that the alleged physical harm inflicted upon MDA was not consistent with the medical certificate presented by Manuel. He also ruled the improbability of the crime of trespassing because Manuel, in his Reply-Affidavit, stated that he ushered the three private respondents inside his house to confront his daughter.^[10]

Concluding that the evidence presented by petitioner MDA, represented by her father, Manuel, could not support the finding of probable cause on the offenses charged against the three private respondents, the investigating prosecutor dismissed the case in his Resolution dated January 27, 2009,^[11] thus:

"IN THE LIGHT OF THE FOREGOING, the case against LELIOSO VILLAFUERTE, BEATRIZ VILLAFUERTE and LUCITA OCON, is recommended dismissed as it is hereby DISMISSED for lack of substantial evidence to establish probable cause that the herein respondents committed the offense charged and are probably guilty thereof."^[12]

Upon a petition for review^[13] before the Office of the Regional State Prosecutor, the case was referred to the Office of the Secretary of Justice.^[14]

On May 23, 2011, the assailed Resolution issued by public respondent DOJ through the Office of the Secretary of Justice affirmed the dismissal of the case against the three private respondents, Lelioso, Beatriz and Lucita. The DOJ agreed with the investigating prosecutor that the evidence presented cannot sustain a finding of probable cause to indict the three private respondents of the crimes charged against them. The May 23, 2011 Resolution reads:

"WHEREFORE, the petition for review is hereby DISMISSED."^[15]

Petitioner moved for a reconsideration^[16] of the May 23, 2011 Resolution, but the same was denied by the public respondent DOJ through the Secretary of Justice herself in the other assailed Resolution dated December 3, 2013.^[17]

Meanwhile, an administrative case^[18] before the Department of Education, Regional Office No. VIII, Palo, Leyte was filed against herein respondent Lucita Ocon. Lucita, being a public school elementary teacher, was charged by Manuel with conduct prejudicial to the best interest of the service and violation of R.A. No. 7610.

Consequently, on November 15, 2011, the Department of Education rendered a Decision^[19] finding Lucita Ocon guilty of Conduct Prejudicial to the Best Interest of the Service and was imposed a fine equivalent to her one month salary.

This Decision from the Department of Education was presented to the DOJ as part of petitioner's evidence^[20] in support of her Motion for Reconsideration of the May 23, 2011 Resolution, which dismissed petitioner's petition for review. But, as already stated, petitioner's Motion for Reconsideration was denied through public respondent's assailed December 3, 2013 Resolution.

Aggrieved by these assailed Resolutions rendered by the public respondent, petitioner MDA brought the instant petition for certiorari before Us on the following grounds:

"THE DISMISSAL OF THE PETITION FOR REVIEW ON THE COMPLAINT FOR TRESPASSING WITH LESS SERIOUS PHYSICAL INJURY IN RELATION TO R.A. 7610 (ANTI-CHILD ABUSE) IS TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING LACK OR [IN] EXCESS OF JURISDICTION AS DEMONSTRATED BY:

(a) DISCARDING AND IGNORING VITAL EVIDENCE WHEN THE INVESTIGATING PROSECUTOR FOUND THAT THE NARRATION OF MANUEL DE ASIS, FATHER OF THE VICTIM, AND WITNESSES OF THE VICTIM MDA AS INCREDIBLE, INCONSISTENT AND CONTRARY TO THE MEDICAL CERTIFICATE.

(b) DISCARDING AND EXCLUDING ON (SIC) PINCHING AND BANGING OF THE HEAD OF THE VICTIM MDA [FOR] BEING NOT REFLECTED IN THE MEDICAL CERTIFICATE.

(c) DISCARDING AND IGNORING THE TESTIMONIES OF COMPLAINANT AND HIS WITNESSES FOR BEING REplete AND PREGNANT WITH INCONSISTENCIES AND MADE THEIR ASSERTION IMPLAUSIBLE.

(d) EXCLUDING THE SWORN STATEMENTS OF SIX (6) EYE WITNESSES TO THE INCIDENT OF JULY 26, 2008 AT 11:00 O'CLOCK IN THE MORNING IN THE HOUSE OF MANUEL DE ASIS AT BRGY. HILUSIG, MAHAPLAG, LEYTE.

(e) FAILING TO GIVE WEIGHT TO THE MEDICAL CERTIFICATE AND VITAL EVIDENCES (SIC) ON RECORDS (SIC) SUCH AS THE EXTRACT OF THE POLICE BLOTTER AND THE TESTIMONY OF WITNESS ROXAN C. POBADORA.

(f) FAILING TO FIND PROBABLE CAUSE DESPITE THE INSURMOUNTABLE EVIDENCE SHOWING THAT THE CRIME OF TRESPASSING WITH LESS SERIOUS PHYSICAL INJURY IN RELATION TO R.A. 7610 PROVING THAT THERE IS INDEED SUFFICIENT FACTS TO ENGENDER THE FILING OF THE CASE CHARGED.

(g) IGNORING THE DECISION OF THE DEPARTMENT OF EDUCATION FINDING PROBABLE CAUSE AND CONVICTED THE RESPONDENT LUCITA OCON, [WHICH DECISION WAS] SUBMITTED TO THE OFFICE OF THE SECRETARY OF JUSTICE THROUGH A MANIFESTATION FILED BY THE PETITIONER THROUGH COUNSEL.”^[21]

Clearly, the main issue to be resolved in this case is whether or not the public respondent, in rendering the assailed resolutions, committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it found that the evidence presented by the petitioner could not sustain a finding of probable cause to indict herein private respondents of the crimes of trespassing and violation of the anti-child abuse law.

We find the petition partly meritorious.

Preliminarily, We rule on the contention of petitioner that the public respondent gravely abused its discretion when it allegedly ignored the decision of the Department of Education finding Lucita Ocon guilty of Conduct Prejudicial to the Best Interest of the Service. Such contention cannot be sustained.

It is well to emphasize that the case before the Department of Education was a separate proceeding that was only against Lucita Ocon, she being a public school teacher. Such decision, therefore, binds only Lucita Ocon and cannot bind Lelioso and Beatriz who were not parties therein. Also, the act Lucita was found guilty of was Conduct Prejudicial to the Best Interest of Service, which centered more on her stature being a teacher, and does not adjudge her guilty of child abuse. Clearly, any finding of the Department of Education will not bind herein public respondent DOJ. The finding of probable cause for purposes of filing an information before the courts lies within the jurisdiction of the public prosecutor, at the first instance, and ultimately of the Secretary of Justice.

Be that as it may, We find that herein public respondent committed grave abuse of discretion in not finding probable cause to indict herein private respondents for violation of the Anti-Child Abuse Law (R.A. No. 7610). However, We affirm its dismissal of the charge for trespassing.

In the instant case, there is no sufficient evidence to form a reasonable ground to believe that the crime of trespass to dwelling, defined under Article 280 of the