



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

**THERESA AVELAU ISTURIS-REBUELTA,**      **G.R. No. 222105**  
Petitioner,

-versus-

**PETER P. REBUELTA,**  
Respondent.  
X-----X

**MARK BALTAZAR MABASA,**  
Petitioner,

**G.R. No. 222143**

Present:

-versus-

**GESMUNDO, C.J., Chairperson,**  
**HERNANDO,**  
**ZALAMEDA,**  
**ROSARIO, and**  
**MARQUEZ, JJ.**

Promulgated:

**PETER P. REBUELTA,**  
Respondent.

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## DECISION

### GESMUNDO, C.J.:

These consolidated Petitions for Review on *Certiorari*<sup>1</sup> seek to reverse and set aside the April 30, 2015 Decision<sup>2</sup> and the October 27, 2015 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 08203, which affirmed the September 9, 2013 Decision<sup>4</sup> rendered by Branch 4, Regional Trial Court, Kalibo, Aklan (RTC). The CA agreed with the RTC that there is probable cause which would warrant the filing of an Information for adultery against Theresa Avelau Isturis-Rebuelta and Mark Baltazar Mabasa.

### *Antecedents*

On June 15, 2010 at around 2:00 p.m., Peter Rebuelta (*Peter*), together with some members of the Criminal Investigation and Detection Group (CIDG) of the Philippine National Police (PNP), barged inside Room 5 of Seawall Inn<sup>5</sup> located in Brgy. Tambak, New Washington, Aklan.<sup>6</sup> The group saw Peter's wife, Theresa Avelau Isturis-Rebuelta (*Theresa*) sitting on the bed and tending to her 3-year old son, while Mark Mabasa (*Mark*) was seated on a chair without a shirt on.<sup>7</sup> The police brought Theresa and Mark (collectively, *petitioners*) to the PNP New Washington Police Station and thereafter, to the office of the CIDG Aklan in Camp Pastor Martelino, New Buswang, Kalibo, Aklan. Theresa was later brought to the Kalibo Police Station where she was detained.<sup>8</sup>

On the following day, Peter filed a complaint for adultery against petitioners before the Office of the Provincial Prosecutor (OPP) of Aklan which was docketed as INV-10F-01407. After finding probable cause for the indictment of adultery, the OPP filed the Information on February 9, 2012,

<sup>1</sup> *Rollo* (G.R. No. 222105), pp. 15–36; *rollo* (G.R. No. 222143), pp. 12–29. Filed under Rule 45.

<sup>2</sup> *Rollo* (G.R. No. 222105), pp. 37–43. The Decision was penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Ma. Luisa Quijano-Padilla of the Special Eighteenth Division, Court of Appeals, Cebu.

<sup>3</sup> *Id.* at 53–54. The Resolution was penned by Associate Justice Jhosep Y. Lopez (now a Member of the Court) and concurred in by Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob of the Special Eighteenth Division, Court of Appeals, Cebu.

<sup>4</sup> *Id.* at 55–65. The Decision in Civil Case No. 9516 was penned by Presiding Judge Ronald H. Exmundo of Branch 4, Regional Trial Court, Kalibo, Aklan.

<sup>5</sup> *Rollo* (G.R. No. 222143), p. 17.

<sup>6</sup> *Rollo* (G.R. No. 222105), p. 22.

<sup>7</sup> *Rollo* (G.R. No. 222143), p. 17.

<sup>8</sup> *Rollo* (G.R. No. 222105), p. 22.

docketed as Criminal Case No. 2747-N, with the First Municipal Circuit Trial Court (MCTC) of New Washington and Batan, New Washington, Aklan.<sup>9</sup>

*Proceedings in the MCTC*

On March 6, 2012, Judge Eva Vita V. Ta-Ay Tejada (*Judge Tejada*), presiding judge of the MCTC, issued an Order<sup>10</sup> directing the prosecution to adduce additional proof to fortify its claim of the existence of probable cause, thus:

IN VIEW OF THE FOREGOING, the prosecution is hereby required to submit additional supporting evidence within five (5) days from receipt of this Order to aid this court in arriving at a conclusion as to the existence of a probable cause, pursuant to Paragraph (a), Section 6, Rule 112 of the Revised Rules of Criminal Procedure.

Failure on the part of the prosecution to comply with this Order will constrain this court to dismiss this case for lack of probable cause.

....

SO ORDERED.<sup>11</sup>

Despite receipt of the said Order, the prosecution did not submit additional evidence.<sup>12</sup> Hence, on June 5, 2012, the MCTC issued another Order<sup>13</sup> dismissing the case for lack of probable cause, *viz.*:

WHEREFORE, in view of the foregoing, this case against the accused Theresa Avelau Isturis Rebuelta and Mark Baltazar Mabasa is hereby DISMISSED.

Accordingly, the bailbond of accused Theresa Avelau Isturis-Rebuelta which she posted pending judicial determination of probable cause is hereby ordered CANCELLED and discharged.

SO ORDERED.<sup>14</sup>

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<sup>9</sup> *Id.* at 56.

<sup>10</sup> *Id.* at 74-75.

<sup>11</sup> *Id.* at 75.

<sup>12</sup> *Id.* at 76.

<sup>13</sup> *Id.* at 76-77.

<sup>14</sup> *Id.* at 77.

Peter, through counsel, filed a Motion for Reconsideration. However, the MCTC denied the same in its August 10, 2012 Order.<sup>15</sup> Aggrieved, Peter filed a Petition for *Certiorari* under Rule 65 before the RTC,<sup>16</sup> ascribing grave abuse of discretion on the part of the MCTC when it dismissed the criminal case for adultery.

### *Ruling of the RTC*

On September 9, 2013, the RTC rendered a Decision granting the Petition for *Certiorari* and reversing the MCTC, to wit:

**WHEREFORE**, the petition is **GRANTED**. The Orders of the 1<sup>st</sup> Municipal Circuit Trial Court of New Washington and Batan, New Washington, Aklan dated June 5, 2012, and Aug[ust] 10, 2012 dismissing Criminal Case No. 2747-N for lack of probable cause are **REVERSED** and **SET ASIDE**, and the Information in the said case is hereby **REINSTATED**. The 1<sup>st</sup> Municipal Circuit Trial Court of New Washington and Batan, New Washington, Aklan, is **DIRECTED** to take cognizance of the case and to proceed with the proceedings of this case.

**SO ORDERED.**<sup>17</sup>

The RTC held that Judge Tejada gravely abused her discretion in disregarding the February 4, 2011 Resolution of the OPP which found probable cause against petitioners. The RTC emphasized that probable cause is not based on clear and convincing evidence or absolute certainty of guilt, but needs only evidence showing the possibility that a crime has been committed, and there is enough reason to believe that the accused committed the same.<sup>18</sup>

As regards Peter's legal personality, the RTC held that being a private crime, adultery may only be prosecuted by the private offended party. Since Peter is the party who stands to benefit or be injured by the judgment, he is the proper party-in-interest to appeal the orders of the MCTC.<sup>19</sup>

Petitioners filed their respective Motions for Reconsideration,<sup>20</sup> but both motions were denied by the RTC in its October 21, 2013 Order.<sup>21</sup> Not in

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<sup>15</sup> *Id.* at 78.

<sup>16</sup> *Id.* at 55.

<sup>17</sup> *Id.* at 65.

<sup>18</sup> *Id.* at 64–65.

<sup>19</sup> *Id.* at 61–62.

<sup>20</sup> *Id.* at 66–73, 98–109.

<sup>21</sup> *Rollo* (G.R. No. 222143), p. 57.

conformity, petitioners separately appealed the October 21, 2013 RTC Order before the CA.<sup>22</sup>

### *Ruling of the CA*

In the now assailed Decision, the CA ruled that the RTC correctly found grave abuse of discretion on the part of Judge Tejada in requiring the submission of evidence that would show petitioners hugging or kissing each other or love letters and photographs of their intimate relationship. According to the CA, such evidence is necessary to secure conviction, but not for the determination of probable cause.<sup>23</sup> Hence, the CA decreed:

**WHEREFORE**, the appeal is **DENIED**. The September 9, 2013 Decision of the RTC, Branch 4, Kalibo, Aklan is **AFFIRMED**.

**SO ORDERED.**<sup>24</sup>

Petitioners filed their respective Motions for Reconsideration,<sup>25</sup> but the CA denied said motions in its October 27, 2015 Resolution. Dissatisfied by the ruling, petitioners filed separate Petitions for Review on *Certiorari* before this Court, which were consolidated by virtue of a Resolution<sup>26</sup> dated February 22, 2016.

### *Issues*

In G.R No. 222105, petitioner Theresa attributes two errors allegedly committed by the CA:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS, CEBU CITY ERRED WHEN IT AFFIRMED THE FINDINGS OF THE HONORABLE REGIONAL TRIAL COURT BRANCH 4, KALIBO, AKLAN THAT THE HONORABLE 1<sup>ST</sup> MUNICIPAL CIRCUIT TRIAL COURT ABUSED ITS DISCRETION WHEN DURING THE DETERMINATION OF PROBABLE CAUSE FOR PURPOSES OF ISSUANCE OF WARRANT OF ARREST, IT ORDERED THE PROSECUTION TO PRESENT ADDITIONAL EVIDENCE WHICH UPON FAILURE TO COMPLY BY THE PROSECUTOR, THE HONORABLE COURT A QUO DISMISSED THE CRIMINAL CASE.

<sup>22</sup> *Id.* at 58–60; *rollo* (G.R. No. 222105), p. 22.

<sup>23</sup> *Rollo* (G.R. No. 222105), pp. 42–43.

<sup>24</sup> *Id.* at 43.

<sup>25</sup> *Id.* at 44–52; *rollo* (G.R. No. 222143), pp. 73–78.

<sup>26</sup> *Rollo* (G.R. No. 222105), pp. 12–13.

2. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO RULE AS TO WHETHER THE PETITION FOR REVIEW ON *CERTIORARI* FILED BY THE PRIVATE COMPLAINANT WITHOUT THE CONSENT OF THE STATE IS PROPER OR NOT.<sup>27</sup>

Theresa argues that no grave abuse of discretion can be attributed to Judge Tejada when she ordered the dismissal of the criminal case for adultery since said judge had personally evaluated the report and the supporting documents submitted by the prosecution, and determined the absence of probable cause.<sup>28</sup> Also, Theresa posits that Peter, in his personal capacity, cannot vaildly appeal the Orders issued by the MCTC without the express concurrence of the public prosecutor. She avers that while adultery may be initiated upon complaint filed by the private party, the prosecution of the case, once filed before the court, may only be done by the public prosecutor or by the private prosecutor but under the direct control and supervision of the former. Hence, when the present case was filed by the OPP before the MCTC, only the public prosecutor or under its direct control and supervision, the private prosecutor, may appeal the dismissal.<sup>29</sup>

Meanwhile, Mark submits the following legal issues for resolution in G.R. No. 222143:

- A. CAN PETITIONERS MARK BALTAZAR MABASA AND THERESA AVELAU ISTURIS-REBUELTA BE CHARGED OF ADULTERY BASED ON THE INFORMATION DATED DECEMBER 13, 2011, ISSUED BY PROSECUTOR RONILO INVENTADO?
- B. ARE THE AFFIDAVITS AND PICTURES SUBMITTED BY PRIVATE COMPLAINANT TO THE OFFICE OF THE PROVINCIAL PROSECUTOR SUFFICIENT TO ESTABLISH A PRIMA FACIE CASE AGAINST PETITIONERS?<sup>30</sup>

Mark posits that the Information, as well as the evidence submitted by the prosecution, did not establish his adulterous relationship with Theresa. He also insists that he was merely sitting on a chair when Peter and the police entered Room 5, and that he only removed his shirt because it was soiled when Theresa's son vomited. Also, the prosecution failed to present evidence that

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<sup>27</sup> *Id.* at 23.

<sup>28</sup> *Id.* at 26-29.

<sup>29</sup> *Id.* at 30.

<sup>30</sup> *Rollo* (G.R. No. 222143), pp. 21-22.

he engaged in sexual intercourse with Theresa, to establish the crime of adultery.<sup>31</sup>

On the other hand, Peter argues that the determination of probable cause only rests on evidence that tends to show the likelihood that a crime has been committed and that the accused committed the same. Evidence of absolute certainty indicating guilt is not necessary. Peter claims that the instant petitions are nothing but schemes of petitioners to delay a full-blown trial of the adultery case.<sup>32</sup>

Based on the above asseverations, the Court is presented with the following issues: (1) Does Peter have legal personality to appeal the June 5, 2012 and August 10, 2012 Orders of the MCTC?; and (2) Did the CA commit serious error in affirming the findings of the RTC that the MCTC gravely abused its discretion in dismissing the adultery case for lack of probable cause?

### *Our Ruling*

The petitions lack merit.

*The private complainant has legal personality to file a special civil action for certiorari under Rule 65 of the Rules of Court upon the ground of lack of jurisdiction*

The Court notes that the CA failed to address the issue questioning Peter's legal personality in challenging the twin Orders of the MCTC. The CA had also overlooked and failed to clarify the pronouncement of the RTC that since adultery is a private crime, the private complainant may prosecute the case. On the other hand, Theresa, as the petitioner in G.R. No. 222105, has been persistent in her submission that once the complaint for adultery is filed in court, its prosecution shall solely be under the control of the public prosecutor.

In private crimes, the right to commence an action or refrain therefrom is at the sole power and option of the offended party, who must decide whether to expose in public, the vices, faults, and disgraceful acts within the family.<sup>33</sup>

<sup>31</sup> *Id.* at 22-25.

<sup>32</sup> *Rollo* (G.R. No. 222105), p. 124.

<sup>33</sup> J. Puno, Separate Opinion in *Alonte v. Savellano, Jr.*, 350 Phil. 700, 756 (1998) [Per J. Vitug, *En Banc*].

Adultery, as a private crime, may only be prosecuted upon a complaint filed by the husband against the guilty parties.<sup>34</sup> It is the husband who would exercise the option of commencing the action to seek judicial redress for the wrong committed by his wife.<sup>35</sup> Worthy of emphasis here is that in all crimes, whether private or public, the term “offended party” refers to the private complainant to whom the offender will be civilly liable in view of Article 100 of the RPC.<sup>36</sup>

Despite the term “private crimes,” the State is still an interested party since all crimes, private or not, result in the disturbance of public peace and order which the State seeks to protect:

The term “private crimes” in reference to felonies which cannot be prosecuted except upon complaint filed by the aggrieved party is misleading. Far from what it implies, it is not only the aggrieved party who is offended in such crimes but also the State. Every violation of penal laws results in the disturbance of public order and safety which the State is committed to uphold and protect. If the law imposes the condition that private crimes like adultery shall not be prosecuted except upon complaint filed by the offended party, it is, as herein pointed earlier “out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial.” Once a complaint is filed, the will of the offended party is ascertained and the action proceeds just as in any other crime. This is shown by the fact that after filing a complaint, any pardon given by the complainant to the offender would be unavailing. It is true, the institution of the action in so-called private crimes is at the option of the aggrieved party. But it is equally true that once the choice is made manifest, the law will be applied in full force beyond the control of, and in spite of the complainant, his death notwithstanding.<sup>37</sup> (Citations omitted)

Once the offended party decides to proceed with the complaint, the action progresses as any other crime. The State, through the prosecutor, shall take over in prosecuting the case; any changes in the decision of the offended party in pursuing the case shall not affect the State’s resolve to vindicate the transgressions to public peace and order.<sup>38</sup> This is because in criminal cases, the State is the offended party while the interest of the private complainant is limited to the civil liability of the accused. As such, the role of the private complainant is reduced to being a witness for the prosecution.<sup>39</sup>

<sup>34</sup> *Donio-Teves v. Vamenta, Jr.*, 218 Phil. 578, 586 (1984) [Per J. Cuevas, Second Division].

<sup>35</sup> *Id.* at 587.

<sup>36</sup> *Garcia v. Court of Appeals*, 334 Phil. 621, 632 (1997) [Per J. Davide, Jr., Third Division].

<sup>37</sup> *Donio-Teves v. Vamenta, Jr.*, *supra* note 34, at 589-590.

<sup>38</sup> J. Puno, Separate Opinion in *Alonte v. Savellano, Jr.*, *supra* note 33, at 756.

<sup>39</sup> *Peñalosa v. Ocampo, Jr.*, G.R. No. 230299, April 26, 2023, <<http://sc.judiciary.gov.ph/230299-jannece-c-penalosa-vs-jose-a-ocampo-jr/>>8 [Per J. Leonen, Second Division].

In view of its interest in vindicating the disturbance to public order and peace, it is only the State who has the right to appeal the dismissal of a criminal case or acquittal of the accused. The private complainant may not take the appeal, except to protect his or her interest in the civil aspect of the case.<sup>40</sup>

The instant petitions do not involve the right to institute a complaint, but rather, the authority to prosecute private crimes, specifically, that of assailing the dismissal of the action due to lack of probable cause. Based on the aforementioned rules, the right to initiate a complaint for a private crime, is always lodged with the offended party or the private complainant such that the State cannot institute the complaint on its own. However, when the complaint has already been filed with the court, it is the public prosecutor, on behalf of the State, who shall take the lead in pursuing the case.

Hence, the flaw in the ruling of the RTC becomes apparent when it muddled up the right to initiate a criminal action involving private crimes with the right to prosecute the same. Peter, as the offended party, has the sole right to initiate a complaint for adultery against petitioners. He has no authority to prosecute the case, as it is the public prosecutor, on behalf of the State, who possesses the same.

Regardless of the confusion, Peter, as the private complainant, has the legal personality to elevate the matter before the RTC.

Worthy of emphasis here that Peter questioned the twin Orders of the MCTC by filing a petition for *certiorari* under Rule 65 of the Rules of Court. The course of this case would have been different if he merely resorted to an ordinary appeal since it is substantially different from a special civil action for *certiorari*.

It is settled that an appeal would be the proper remedy against an error of law or fact, or simply, a mistake of judgment, while *certiorari* is designed to correct errors of jurisdiction.<sup>41</sup> An appeal is also a continuation of the original suit where the parties are the original parties in the action. However, a *certiorari* is an entirely independent action from the proceedings initiated in the court of origin.<sup>42</sup> The parties to a Petition for *Certiorari* are the aggrieved

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<sup>40</sup> *Id.*, citing *People v. Court of Appeals*, 755 Phil. 80, 98 (2015) [Per J. Peralta, Third Division].

<sup>41</sup> *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 779-780 (2004) [Per J. Panganiban, Third Division].

<sup>42</sup> *Ro-Ann Veterinary Manufacturing, Inc. v. Bingbing*, 851 Phil. 260, 270 (2019) [Per J. Reyes, Jr., A., Third Division].

party, who is denominated as the “petitioner,” and the prevailing parties composed of the public and the private respondents.<sup>43</sup>

As regards the subject matter, only judgments or final orders are proper subjects of an appeal. Since jurisdiction is the issue in *certiorari*, the petition may be only directed against an interlocutory order, or where there is no appeal or any plain, speedy or adequate remedy.<sup>44</sup>

Finally, only the public prosecutor may file an appeal in criminal actions, subject to the exception that the private complainant may appeal the civil aspect of the case.<sup>45</sup> On the other hand, owing to his or her interest in the civil aspect of the case, the private complainant may file a petition for *certiorari* questioning the decision of the lower court on jurisdictional grounds. In this instance, the action will be prosecuted in the name of the private complainant instead of the People of the Philippines.<sup>46</sup> In expounding on the right of the private complainant to file a petition for *certiorari*, the Court in *People v. Court of Appeals*,<sup>47</sup> underscored that such right stems from the private complainant’s immense interest in obtaining justice after having been the subject of the offense committed by the accused.<sup>48</sup>

Recall in the instant case that Peter resorted to a petition for *certiorari* in assailing the June 5, 2012 and August 10, 2012 Orders of the MCTC on the ground of grave abuse of discretion. Since the petition for *certiorari* is not a continuation of the adultery case in the MCTC, but an original and independent action against the jurisdiction of the MCTC in dismissing the case, Peter had the requisite legal personality to file the same even without the concurrence of the public prosecutor. He even properly filed the petition as the caption showed his name instead of “People of the Philippines.” Even his filing of a motion for reconsideration with the MCTC was also proper considering that such motion is an essential requirement in the filing of a petition for *certiorari*. As the private complainant, Peter cannot appeal the dismissal of the adultery case he had commenced because it is only the OPP who may do so. Needless to state that with the dismissal of the adultery case, his right to be awarded with civil damages had also been foreclosed. Left

<sup>43</sup> *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, *supra* note 41, at 781.

<sup>44</sup> *Id.*

<sup>45</sup> *People v. SPO2 Madali*, 402 Phil. 116, 130 (2001) [Per J. Mendoza, Second Division]. The private complainant may also be allowed to appeal the criminal action without the prior conformity of the public prosecutor (a) when the State takes a position contrary to the interest of the private complainant, however, the appeal shall only be limited to question the award of indemnity and damages (*Rodriguez v. Gadiane*, 527 Phil. 691, 697 (2006) [Per J. Tinga, Third Division]); (b) when due process is denied to the prosecution and the State or its agents refuse to act on the case (*BDO Unibank v. Pua*, 856 Phil. 81, 92 (2019) [Per J. Carpio, Second Division]); *Morillo v. People*, 775 Phil. 192, 210 (2015) [Per J. Peralta, Third Division]; and (c) when the judge committed grave error or when the interest of substantial justice so requires (*Morillo v. People*, *supra*, at 211).

<sup>46</sup> *People v. Judge Santiago*, 255 Phil. 851, 862 (1989). [Per J. Gancayco, First Division].

<sup>47</sup> *Supra* note 40.

<sup>48</sup> *Id.* at 99.

without any appeal or any plain, speedy or adequate remedy to protect his interest in the civil aspect of the case, Peter's filing of a special civil action for *certiorari* was proper.

However, the Court finds the occasion to refer to the ruling in the fairly recent case of *Austria v. AAA*,<sup>49</sup> which presented a similar issue involving the legal personality of the private complainant in filing an appeal or a petition for *certiorari* before the CA and this Court. While the Court upheld the legal personality of the private complainant in filing a petition for *certiorari* with the CA, the Court nonetheless held that a private complainant is not vested with blanket authority to question judgments or orders of trial courts without the conformity of the Office of the Solicitor General (*OSG*).<sup>50</sup> Hence, the Court laid down guidelines for the members of the bar and bench to observe whenever a private complainant would appeal or file a petition for *certiorari* before the CA and this Court. Those guidelines emphasized the need to involve and require the active participation of the OSG, as counsel of the State, in the private complainant's choice of remedy.<sup>51</sup> The participation of the OSG ensures that the State is always heard on how its interest on the criminal aspect would be affected by the chosen remedy of the private complainant.

Notably, *Austria* only made reference to the authority of the OSG to represent the State where the appeal or petition for *certiorari* involving a criminal case is filed by the private complaint before the CA or this Court. It did not provide for an occasion where the same remedies are filed by the private complainant before the RTC, as in this case. It is pertinent to point this out in view of the delineation of functions between the OSG and the provincial or city prosecutors in acting as counsels for the State. As explained in *Fenequito v. Vergara, Jr.*,<sup>52</sup> when the case is filed or pending in the RTC, it is the provincial or city prosecutor who should represent the State, but if it is with the CA or this Court, the OSG shall act as counsel for the People, *viz.*:

It is wrong for petitioners to argue that it is the OSG which has authority to file an appeal with the RTC. Section [35(1)], Chapter 12, Title III of Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, mandates the OSG to represent "the Government in the Supreme Court and the Court of Appeals in all criminal proceedings." On the other hand, Section 11 of Presidential Decree No. 1275, entitled "Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service," which was the law in force at the time the appeal was filed, provides that the

<sup>49</sup> G.R. No. 205275, June 28, 2022, <<http://sc.judiciary.gov.ph/wp-content/uploads/2023/02/205275.pdf> [Per J. Lopez. M., *En Banc*].

<sup>50</sup> *Id.* at 25-30.

<sup>51</sup> *Id.* at 33-34.

<sup>52</sup> 691 Phil. 335 (2012) [Per J. Peralta, Third Division].

provincial or the city fiscal (now referred to as prosecutor) “shall have charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts of such province or city and shall therein discharge all the duties incident to the institution of criminal prosecutions.” In consonance with the above-quoted provision, it has been held by this Court that the fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. Since the appeal, in the instant case was made with the RTC of Manila, it is clear that the City Prosecutor or his assistant (in this case, the Assistant City Prosecutor) had authority to file the same.<sup>53</sup> (Emphasis and citations omitted)

Presidential Decree No. 1275<sup>54</sup> which *Fenequito* cited as source of the authority of provincial and city prosecutors to represent the State in criminal actions before the RTC, has been repealed by Republic Act No. 10071<sup>55</sup> or the Prosecution Service Act of 2010. Regardless, Section 9(c) of Republic Act No. 10071 maintained the same function of the provincial or city prosecutor to take “charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts at the province or city and therein discharge all the duties incident to the institution of criminal actions.” Clearly, despite the changes brought by Republic Act No. 10071, the duty of provincial and city prosecutors to appeal criminal actions to the RTC remains the same.

Thus, when the appeal or petition for *certiorari* is filed by the private complainant with the RTC, the provincial or city prosecutors shall act as counsel for the State, but if the same is filed with the CA or this Court, the OSG shall be the representative. In either case, both the public prosecutor and the OSG are expected to unceasingly defend the interests of the State, especially in exacting retribution for the transgressions to its laws and public order.

Consequently, there is reason to equally apply the ruling and guidelines laid down in *Austria* to appeals and *certiorari* petitions filed by the private complainant before the RTCs. Hence, the guidelines laid down in *Austria* are hereby restated to solicit the participation of the State, through the provincial or city prosecutors, in the event that the appeal or petition for *certiorari* is filed by the private complainant before the RTC:

- (1) The private complainant has the legal personality to appeal the civil liability of the accused or file a petition for *certiorari* to preserve his

<sup>53</sup> *Id.* at 346–347.

<sup>54</sup> Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service, dated April 11, 1978.

<sup>55</sup> An Act Strengthening and Rationalizing the National Prosecution Service; lapsed into law on April 8, 2010 in accordance with Article VI, Section 27(1) of the 1987 Constitution.

or her interest in the civil aspect of the criminal case. The appeal or petition for *certiorari* must allege the specific pecuniary interest of the private offended party. The failure to comply with this requirement may result in the denial or dismissal of the remedy.

The [RTC] shall require the [*provincial or city prosecutor*] to file [a] comment within a non-extendible period of thirty (30) days from notice if it appears that the resolution of the private complainant's appeal or petition for *certiorari* will necessarily affect the criminal aspect of the case or the right to prosecute (*i.e. existence of probable cause, venue or territorial jurisdiction, elements of the offense, prescription, admissibility of evidence, identity of the perpetrator of the crime, modification of penalty, and other questions that will require a review of the substantive merits of the criminal proceedings, or the nullification/reversal of the entire ruling, or cause the reinstatement of the criminal action or meddle with the prosecution of the offense, among other things*). The comment of the [*provincial or city prosecutor*] must state whether it conforms or concurs with the remedy of the private offended party. The judgment or order of the [RTC] granting the private complainant's relief may be set aside if rendered without affording the People, through the [*provincial or city prosecutor*], the opportunity to file a comment.

- (2) The private complainant has no legal personality to appeal or file a petition for *certiorari* to question the judgments or orders involving the criminal aspect of the case or the right to prosecute, unless made with the [*provincial or city prosecutor's*] conformity.

The private complainant must request the [*provincial or city prosecutor's*] conformity within the reglementary period to appeal or file a petition for *certiorari*. The private complainant must attach the original copy of the [*provincial or city prosecutor's*] conformity as proof in case the request is granted within the reglementary period. Otherwise, the private complainant must allege in the appeal or petition for *certiorari* the fact of pendency of the request. If the [*provincial or city prosecutor*] denied the request for conformity, the Court shall dismiss the appeal or petition for *certiorari* for lack of legal personality of the private complainant.

- (3) The [RTC] shall require the [*provincial or city prosecutor*] to file comment within a non-extendible period of thirty (30) days from notice on the private complainant's petition for *certiorari* questioning the acquittal of the accused, the dismissal of the criminal case, and the interlocutory orders in criminal proceedings on the ground of grave abuse of discretion or denial of due process.
- (4) These guidelines shall be prospective in application.<sup>56</sup>

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<sup>56</sup> *Supra* note 49, at 33-34.

*The CA did not err in affirming the RTC; the MCTC gravely abused its discretion when it required evidence establishing guilt beyond reasonable doubt and disregarded the evidence and resolution of the OPP*

Petitioners maintain that in dismissing the adultery case, Judge Tejada made a personal determination of the existence of probable cause based on the evidence presented by the prosecution. As such, no grave abuse of discretion may be attributed to her.

The Court is not persuaded.

The authority to determine probable cause on the part of the public prosecutor and the judge has already been delineated. The determination by the public prosecutor is executive, the purpose of which is for filing a criminal information in court,<sup>57</sup> and determining if there is enough evidence to support it.<sup>58</sup>

On the other hand, the determination by a judge is a judicial function, which is being exercised to determine if there is a necessity to place the accused under custody.<sup>59</sup> In doing so, the judge will determine the existence of probable cause independent of the findings of the prosecutor and will have no capacity to review the determination made by the latter.<sup>60</sup>

Despite the distinction between the executive and judicial determination of probable cause, a judge may still dismiss the case if the evidence does not establish probable cause. This authority is written in Section 5, paragraphs (a) and (b), Rule 112 of the Rules, which read:

Section 5. *When warrant of arrest may issue.* –

(a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable case, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary

<sup>57</sup> *De Los Santos-Dio v. Court of Appeals*, 712 Phil. 288, 305 (2013) [Per J. Perlas-Bernabe, Second Division].

<sup>58</sup> *Mendoza v. People*, 733 Phil. 603, 610 (2014) [Per J. Leonen, Third Division].

<sup>59</sup> *De Los Santos-Dio v. Court of Appeals*, *supra* note 57, at 306.

<sup>60</sup> *Mendoza v. People*, *supra* note 58, at 611.

investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty days (30) days from the filing of the complaint or information.

(b) *By the Municipal Trial Court.* – When required pursuant to the second paragraph of Section 1 of the Rule, the preliminary investigation of cases falling under the original investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court or Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court shall be conducted by the prosecutor. The procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section.

Evidently, a judge has the following options upon the filing of an information: (1) dismiss the case if the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.<sup>61</sup>

In the determination of probable cause, the judge should consider the report of the investigating prosecutor, the affidavit and documentary evidence of the parties, the counter-affidavit of the accused and witnesses, and the transcript of stenographic notes taken during the preliminary investigation.<sup>62</sup> A judge may only dismiss the case only if it is clear that the evidence on record plainly fails to establish probable cause. However, if the evidence shows that the crime charged has likely been committed and the respondent is probably guilty of the same, the judge shall not dismiss the case, and instead order the parties to proceed to trial.<sup>63</sup> Courts are not allowed to interfere in the finding of probable cause by public prosecutors except if the determination by the latter was done in a capricious and whimsical manner evidencing grave abuse of discretion.<sup>64</sup>

The standards to be observed in the determination of probable cause is that of whether the facts are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof.<sup>65</sup> A judge is not required to probe the evidence with the end of procuring a conviction; it will suffice if the evidence establishes reasonable belief that the act or omission constitutes the offense charged.<sup>66</sup>

<sup>61</sup> *Maza v. Judge Turla*, 805 Phil. 736, 756 (2017) [Per J. Leonen, Second Division].

<sup>62</sup> *Okabe v. Gutierrez*, 473 Phil. 758, 782 (2004) [Per J. Callejo, Sr., Second Division].

<sup>63</sup> *De Los Santos-Dio v. Court of Appeals*, *supra* note 57, at 308.

<sup>64</sup> *People v. Alcantara*, 835 Phil. 635, 646–647 (2018) [Per J. Tijam, First Division]; *Caterpillar, Inc. v. Samson*, 799 Phil. 286, 308 (2016). [Per J. Bersamin, First Division].

<sup>65</sup> *People v. Alcantara*, *supra*, at 647.

<sup>66</sup> *Ang-Abaya v. Ang*, 593 Phil. 530, 541 (2008) [Per J. Ynares-Santiago, Third Division].

Thus, in *People v. Alcantara*,<sup>67</sup> the Court held that grave abuse of discretion attended the dismissal of the case for violation of Section 4(a) and (e) in relation to Section 6(c) of Republic Act No. 9208 or the Anti-Trafficking in Persons Act of 2003, when the trial court faulted the prosecution for failing to submit evidence that actual sexual intercourse or lascivious conduct was committed at the time the raid was conducted. The Court went on to state that the grounds for dismissing the case are evidentiary matters which should be properly ventilated during trial.<sup>68</sup>

The Court likewise found grave abuse of discretion on the part of the trial court in *Young v. People*,<sup>69</sup> when it dismissed the case for lack of probable cause after probing into factual and evidentiary matters. There was also grave abuse of discretion in the case of *AAA v. Judge Carbonell*,<sup>70</sup> when the judge disregarded the resolutions of the public prosecutors and the Department of Justice, and proceeded to dismiss the case purportedly due to the absence of the private complainant and her witnesses during the scheduled hearing for the judicial determination of probable cause.

In view of the above doctrines and principles, no grievous error may be attributed on the part of the CA in rendering its April 30 2015 Decision and October 27, 2015 Resolution. The Court concurs with the CA when it made the following observations that probable cause exists in charging petitioners of the crime of adultery:

The record of the case revealed that there was sufficient evidence presented by the prosecution that supports the probability that the crime of adultery has been committed and respondents-appellants might be guilty thereof. As correctly observed by the court *a quo*, material details which are concrete, direct and categorical are contained in the evidence submitted consisting of the affidavits of petitioner-appellee and his witnesses; the transcriptions of the recorded sound clips on the interview of one of petitioner-appellee and respondent-appellant Theresa Isturis-Rebuelta's sons. These pieces of evidence, including the circumstances in which the respondents-appellants were arrested, sufficiently engender a well-founded belief that the crime of adultery may have been committed.

As painstakingly enumerated by the court *a quo*, pieces of evidence submitted by the prosecution tend to show that respondents-appellants had been carrying out an illicit relationship for quite some time. Petitioner-appellee then sought the help of the police in conducting surveillance on respondents-appellants which ultimately led to their arrest inside a room at the Seawall Inn in Barangay Tambak, New Washington, Aklan. These circumstances are enough to make a reasonable inference that respondents-appellants could not have gone inside the room for wholesome activities. As

<sup>67</sup> *Supra* note 64.

<sup>68</sup> *Id.* at 648.

<sup>69</sup> See *Young v. People*, 780 Phil. 439, 451 (2016) [Per J. Perlas-Bernabe, First Division].

<sup>70</sup> 551 Phil. 936, 949 (2007) [Per J. Ynares-Santiago, Third Division].

aptly observed by the court *a quo*, even the presence of respondent-appellant Theresa Isturis-Rebuelta's son with petitioner-appellee could not place a color of moral justification for her to check into a hotel room with a man other than her husband.<sup>71</sup>

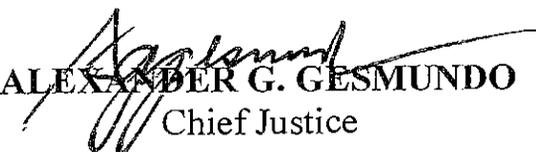
When Judge Tejada based the dismissal of the adultery case due to the absence of evidence, such as photos or other articles to positively show the intimacy of petitioners, she went beyond the standards of probable cause. To reiterate, probable cause only demands reasonable belief or probability that a crime has been committed. Evidence tending to establish guilt beyond reasonable doubt are proper in a trial, and not in the judicial determination of probable cause under Section 5 of Rule 112 of the Rules.

Furthermore, the RTC had properly pointed out that aside from the affidavits and other supporting evidence submitted by the prosecution, Judge Tejada had also disregarded the February 4, 2011 Resolution of the OPP.<sup>72</sup> It must be stressed at this instance, that although judges are permitted to dismiss cases under Section 5 of Rule 112, they may only do so after taking into consideration all the available evidence including the resolution of the public prosecutor. Clearly, Judge Tejada gravely abused her discretion when she dismissed the adultery case against petitioners.

Trial courts should be reminded that absent any proof that the public prosecutor had whimsically and arbitrarily charged the accused of a crime, they cannot interfere and reverse the finding of probable cause by the prosecutor. Caution must constantly be observed in dismissing cases on the ground of lack of probable cause considering that the determination of probable cause to bring the accused to trial, is an executive function that belongs to the public prosecutor.

**ACCORDINGLY**, the consolidated Petitions for Review on *Certiorari* are **DENIED** for lack of merit. The April 30, 2015 Decision and the October 27, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 08203 are **AFFIRMED**.

**SO ORDERED.**

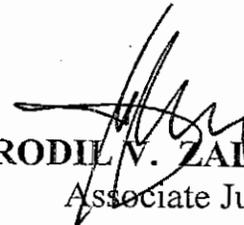
  
ALEXANDER G. GESMUNDO  
Chief Justice

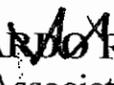
<sup>71</sup> *Rollo* (G.R. No. 222105), p. 42.

<sup>72</sup> *Id.* at 64.

WE CONCUR:

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice