



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

RECEIVED
 JPP 04 2018
 BY: *[Signature]*
 TIME: *9:30*

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Petitioner,

G.R. No. 207040

- versus -

Present:

LEONARDO-DE CASTRO, J.,*
Acting Chairperson,
 PERALTA,**
 DEL CASTILLO,***
Acting Chairperson,
 TIJAM, and
 GESMUNDO, JJ.****

SHELDON ALCANTARA y LI,
JUNNELYN ILLO y YAN,
NATIVIDAD ZULUETA y YALDUA,
MA. REYNA OCAMPO y CRUZ,
MAILA TO y MOVILLON, MA.
VICTORIA GONZALES y DE DIOS,
ELENA PASCUAL y ROQUE,
MARY ANGELIN ROMERO y
BISNAR and NOEMI VILLEGAS y
BATHAN,

Respondents.

Promulgated:

JUL 04 2018

[Signature]

X-----X

* Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018; on official leave.

** Designated as additional Member per Raffle dated August 9, 2017 *vice* Associate Justice Francis H. Jardeleza.

*** Designated as Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

**** Designated as additional Member per Special Order No. 2560 dated May 11, 2018.

M

DECISION

TIJAM, J.:

Before us is a Petition for Review on *Certiorari*¹ filed by the People of the Philippines, through the Office of the Solicitor General (OSG), assailing the Decision² dated April 26, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123672 dismissing the Petition for *Certiorari* filed by the OSG, which affirmed the Order dated October 20, 2011 of the Regional Trial Court (RTC) of Makati City, Branch 145, in Criminal Case No. 11-2408.

The Antecedent Facts

On September 20, 2011, the members of the Criminal Investigation and Detection Group-Women and Children Protection Division (CIDG-WCPD) received information that Pharaoh KTV and Entertainment Centre (Pharaoh), a KTV bar, was being used as a front for sexual exploitation, wherein young students were being employed as entertainers. An ABS-CBN News program called “XXX” recorded the same by means of a hidden camera used by their asset. As such, the CIDG-WCPD conducted a series of surveillance operations.³

On September 20, 2011, the members of CIDG-WCPD, with Senior Police Officer 3 Leopoldo Platilla (SPO3 Platilla) acting as the poseur-customer, went inside Pharaoh together with four other members of the entrapment team. The other team members remained outside the establishment in order to cordon off the area and act as the raiding team.⁴

Once inside, SPO3 Platilla and his four companions were met by Winchel Alega y Aganan (Aganan), the receptionist. Aganan led them to the 3rd floor, where they were met by the floor manager, Junnelyn Illo (Illo). Illo accompanied SPO3 Platilla to the aquarium room with a huge one-way mirror where women, dressed in cocktail dresses, were displayed. SPO3 Platilla and his companions selected their respective partners. The team then paid ₱5,000.00 per hour for the rent of the VIP room and ₱10,400.00 for each woman. The said amount allegedly entitled them to avail of “extra services” in the form of sexual intercourse with their respective selected partners. The team then proceeded to a VIP room.⁵

Upon reaching the VIP room, SPO3 Platilla asked Illo if there were available rooms where they can avail the “extra services.” Illo replied that

¹ *Rollo*, pp. 7-30.

² Penned by Associate Justice Samuel H. Gaerlan, concurred in by Associate Justices Rebecca L. De Guia-Salvador and Apolinario D. Bruselas, Jr.; id. at 33-43.

³ Id. at 34.

⁴ Id. at 46.

⁵ Id.

the hotel rooms at the 2nd floor of the building were available. Thereafter, their selected partners arrived, still dressed in cocktail dresses, but allegedly without any underwears.⁶

SPO3 Platilla texted the overall ground commander to proceed with the raid. During the raid, Illo, Sheldon Alcantara y Li, Natividad Zulueta y Yaldua, Ma. Reyna Ocampo y Cruz, Maila To y Movillon, Ma. Victoria Gonzales y De Dios, Elena Pascual y Roque, Mary Angelin Romero y Bisnar and Noemi Villegas y Bathan (collectively, the respondents), who were floor managers, were arrested.⁷

Among the women rescued by the CIDG-WCPD were Ailyn Almoroto Regacion, Jocelyn Toralba Melano, Hazelyn Jane Dela Cruz Isidro, and Garian Delas Penas Edayan⁸ (complainants), who executed a *Sinumpaang Salaysay*. In their *Sinumpaang Salaysay*, complainants alleged that the VIP room contains a karaoke and sofa. They claimed that they only serve guests inside the VIP room, sing and/or eat with them. Some guests tried to touch parts of their body but they claimed that “*ito’y pinipilit na maiwasan at mapigilan.*”⁹ However, during the preliminary investigation, complainants withdrew their *Sinumpaang Salaysay*, and claimed that “they never wanted to execute any statement and that they do not want to put their co-employees and friends from Pharaoh in trouble.”¹⁰

Respondents, on the other hand, denied that Pharaoh was being used as a front for prostitution and sexual exploitation. They further claimed that the complainants and other Customer Liaison Entertainment Officers (CLEOs) were never recruited since they came voluntarily to Pharaoh.¹¹

On October 4, 2011, a Resolution¹² was issued by the Assistant State Prosecutor and Prosecution Attorney of the Department of Justice (DOJ) finding probable cause for charging respondents with violation of Section 4(a) and (e),¹³ in relation to Section 6(c)¹⁴ of Republic Act (R.A.)

⁶ Id. at 47.

⁷ Id.

⁸ Id. at 50.

⁹ Id. at 50-51.

¹⁰ Id. at 51.

¹¹ Id. at 53-56.

¹² Id. at 44-61.

¹³ **Sec. 4. Acts of Trafficking in Persons.** - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

x x x x

(e) To maintain or hire a person to engage in prostitution or pornography[.]

¹⁴ **Sec. 6. Qualified Trafficking in Persons.** - The following are considered as qualified trafficking:

x x x x

No. 9208,¹⁵ also known as the Anti-Trafficking in Persons Act of 2003. As such, an Information¹⁶ charging the respondents with qualified trafficking of persons was filed in court.

Respondents filed an Urgent Motion for Judicial Determination of Probable Cause¹⁷ before the RTC of Makati City, Branch 145 presided by Judge Carlito B. Calpatura (Judge Calpatura).

On October 20, 2011, the RTC issued its Order finding no probable cause for the indictment of the respondents, thus:

WHEREFORE, for lack of probable cause, the information in this case filed against all the [respondents]:

SHELDON ALCANTARA y LI,
JUNNELYN ILLO y YAN,
NATIVIDAD ZULUETA y YALDUA,
MA. REYNA OCAMPO y CRUZ,
MAILA TO y MOVILLON,
MA. VICTORIA GONZALES y DE DIOS,
ELENA PASCUAL y ROQUE,
MARY ANGELIN ROMERO y BISNAR and
NOEMI VILLEGAS y BATHAN

is ordered DISMISSED. The [respondents] are ordered released from custody unless they or any of them are detained for some other legal cause or causes.

SO ORDERED.¹⁸

In issuing the assailed order, the RTC reasoned as follows:

The court has closely examined the evidence and found that no factual bases sufficient to support the existence of probable cause of the acts being charged. To illustrate, there is no evidence that the named women were vulnerable for recruitment, hiring, or to be received or maintained as CLEO for purposes of prostitution or pornography. On the contrary, all the said women were in unison in claiming that they were not recruited by the [respondents] or any of the officers or authorized agents of Pharaoh KTV. It is also their claim that they applied with Pharaoh KTV

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group[.]

¹⁵ AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER. Approved on May 26, 2003.

¹⁶ *Rollo*, pp. 63-64.

¹⁷ *Id.* at 66-92.

¹⁸ *Id.* at 35.

at their own free will and volition. No evidence appears on record to contradict their claim.

On the aspect of pornography as an ingredient of the offense charged, there is nothing in the "Affidavit of Arrest" of the arresting officers nor in the affidavits of the witnesses for the state which would suggest acts of pornography as defined under Sec. 3(h) of R.A. [No.] 9208. x x x

On the aspect of prostitution, Sec. 3-c of the same law defines the same as referring to 'any act, transaction, scheme or design involving the use of person by another, for sexual intercourse or lascivious conduct in exchange of money, profit or any other consideration. x x x

Again, going over the affidavits of the arresting officers, and the supposed victims, there is nothing which would indicate that there was sexual intercourse or lascivious conduct being actually performed or about to be performed when the raid took place. x x x

x x x x

Lastly, there is also no evidence of the alleged payment of money for the alleged "extra service". In entrapment, it is the normal procedure which can be taken judicial notices of by judges by reason of judicial function, that the money should be properly marked, recorded in the logbook of the operatives, dusted in chemical to make it sure it will be identifiable as to who received it. This procedure will ensure the integrity of the money as object evidence. This was also not done.¹⁹

Aggrieved, the OSG filed a Petition for *Certiorari* before the CA alleging that Judge Calpatura gravely abused his discretion in taking cognizance of the motion to determine probable cause as the same is an executive function that belongs to the prosecutor. Further, the OSG alleged that Judge Calpatura gravely abused his discretion when it found that no probable cause exists for the filing of charges against respondents.

On April 26, 2013, the CA rendered the Decision²⁰ dismissing the Petition for *Certiorari* and affirming the RTC's ruling that no probable exist to charge the respondents.

Hence, this petition.

Arguments of the OSG

The OSG claimed that the determination of probable cause to hold a person for trial is a function that belongs to the public prosecutor. The correctness of the existence of which is a matter that the trial court cannot pass upon.²¹ If there was palpable error or grave abuse of discretion in the

¹⁹ Id. at 40-41.

²⁰ Id. at 33-43.

²¹ Id. at 16.

M

public prosecutor's finding of probable cause, the remedy should be to appeal such finding to the Secretary of Justice. In this case, the Information has already been filed with the court and instead of appealing the resolution of the prosecutor, the respondents opted to file a motion for judicial determination of probable cause.²²

Issues

Ultimately, the issues to be resolved are: 1) whether Judge Calpatura can determine the existence of probable cause; and 2) whether Judge Calpatura was correct in ordering the dismissal of the case for lack of probable cause.

Ruling of the Court

Judge Calpatura can personally determine the existence of probable cause for the purpose of issuing a warrant of arrest

Section 6(a), Rule 112 of the Revised Rules on Criminal Procedure provides that:

*Sec. 6. 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 cause, 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 investigation or when the complaint or information was filed pursuant to section 7 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 (30) days from the filing of the complaint of information.*

The fact that Judge Calpatura has jurisdiction to determine probable cause for the purpose of issuing a warrant of arrest has long been settled. In the recent case of *Liza L. Maza, et al. v. Hon. Evelyn A. Turla, et al.*,²³ this Court reiterated that:

Upon filing of an information in court, trial court judges must determine the existence or non-existence of probable cause based on their personal evaluation of the prosecutor's report and its supporting

²² Id. at 16-17.

²³ G.R. No. 187094, February 15, 2017.

documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence.²⁴ x x x.

It must, however, be emphasized that the determination of probable cause has two separate and distinct kinds – an executive function and a judicial function. In the case of *Mendoza v. People, et al.*,²⁵ this Court distinguished the two, thus:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

The difference is clear: The executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.²⁶ (Citations omitted)

The determination of the judge of the probable cause for the purpose of issuing a warrant of arrest does not mean, however, that the trial court judge becomes an appellate court for purposes of assailing the determination of probable cause of the prosecutor.²⁷ The proper remedy to question the resolution of the prosecutor as to his finding of probable cause is to appeal the same to the Secretary of Justice.²⁸ If the Information is valid on its face and the prosecutor made no manifest error or his finding of probable cause was not attended with grave abuse of discretion, such findings should be given weight and respect by the courts.²⁹ The settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to

²⁴ *Id.*

²⁵ 733 Phil. 603 (2014).

²⁶ *Id.* at 610, citing *People v. Castillo, et al.*, 607 Phil. 754, 764-765 (2009).

²⁷ *Id.* at 611.

²⁸ *Filadams Pharma, Inc. v. Court of Appeals, et al.*, 470 Phil. 290, 300 (2004).

²⁹ *Mendoza v. People, et al.*, *supra* at 612.



leave to the prosecutor the determination of what constitutes sufficient evidence to establish probable cause for the purpose of filing an information to the court. Courts can neither override their determination nor substitute their own judgment for that of the latter; they cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.³⁰

Judge Calpatura erred when he dismissed the case for lack of probable cause

“Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof.”³¹ In the case of *People of the Philippines v. Borje, Jr., et al.*,³² we held that:

For purposes of filing a criminal information, probable cause has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondents are probably guilty thereof. It is such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. x x x.³³ (Citations omitted)

Here, the records do not disclose that the prosecutor's finding of probable cause was done in a capricious and whimsical manner evidencing grave abuse of discretion. As such, his finding of probable cause, being primarily lodge with him, should not be interfered with by the courts. Clearly, Judge Calpatura erred when he dismissed the case against the respondents for lack of probable cause. To note, Judge Calpatura stated that the prosecution failed to show that there was actual sexual intercourse or lascivious conduct being committed on the day of the raid. Further, Judge Calpatura reasoned that there was no evidence of payment of money for the alleged “extra services,” since the money used to pay the same was not marked, recorded in the logbook and dusted in chemical to make it identifiable.³⁴

³⁰ *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 492-493 (2014).

³¹ *Callo-Claridad v. Esteban, et. al.*, 707 Phil. 172, 185 (2013).

³² 749 Phil. 719 (2014).

³³ *Id.* at 728.

³⁴ *Rollo*, p. 41.

The said reasons of Judge Calpatura in dismissing the case for lack of probable cause are evidentiary matters which should be properly ventilated during the trial.³⁵ Thus, it was clearly premature for Judge Calpatura and the CA to make a definitive finding that there was no illegal trafficking of persons simply for the reason that no actual sexual intercourse or lascivious conduct was committed at the time of the raid, and the police authorities failed to mark the money used to pay for the alleged “extra services.” To reiterate, “the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be best passed upon after a full-blown trial on the merits.”³⁶

WHEREFORE, the petition is **GRANTED**. The Decision dated April 26, 2013 of the Court of Appeals in CA-G.R. SP No. 123672 is hereby **REVERSED and SET ASIDE**. Accordingly, this case is **REMANDED** to the Regional Trial Court of Makati City, Branch 145 in Criminal Case No. 11-2408 for appropriate proceedings.

SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice


WE CONCUR:

(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

³⁵ *People v. Engr. Yecyec, et al.*, 746 Phil. 634, 648 (2014).

³⁶ *Id.*

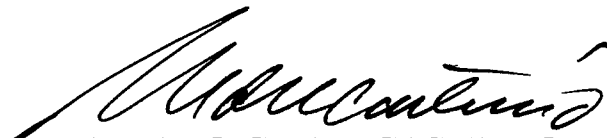

DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson


ALEXANDER G. GESMUNDO
Associate Justice


ATTESTATION

I attest 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.


MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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.


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)