



Republic of the Philippines  
Supreme Court  
Baguio City

SECOND DIVISION

DEPARTMENT OF JUSTICE,  
Petitioner,

G.R. No. 189596

Present:

CARPIO, J.,  
Chairperson,  
BRION,  
BERSAMIN,\*  
DEL CASTILLO, and  
PEREZ, JJ.

- versus -

TEODULO NANO ALAON,  
Respondent.

Promulgated:

APR 23 2014

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DECISION

PEREZ, J.:

We are urged in this Petition for Review on *Certiorari* to reverse the Decision<sup>1</sup> of the Court of Appeals in CA-G.R. SP No. 103816 dated 25 March 2009, which annulled and set aside the Resolution<sup>2</sup> dated 18 March 2008 of petitioner Department of Justice (DOJ) in I.S. No. 2002-10728. The assailed Resolution: (1) set aside the Supplemental Resolution dated 16 December 2002 of the Provincial Prosecutor of Camarines Norte; and (2) directed the filing of the corresponding Information for three (3) counts of rape against respondent Teodulo Nano Alaon (Alaon).

\* Per Raffle dated 21 April 2014.

<sup>1</sup> Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) with Associate Justices Mario L. Guariña III and Romeo F. Barza, concurring. *Rollo*, pp. 38-44.

<sup>2</sup> Penned by Undersecretary Ernesto L. Pineda. *Id.* at 71-74.

The fairly simple facts follow.

Private complainant AAA<sup>3</sup> filed a complaint against Alaon charging him with the crime of rape occurring on three separate but successive occasions. The first incident transpired sometime in October 2000, while she was picking guavas that had fallen from trees at a construction site beside Alaon's house in Sta. Elena, Camarines Norte. Alaon pulled AAA towards a guava tree; removed her shorts and underwear and simultaneously undressed himself; laid her on a bench and forcibly inserted his penis into her vagina.

Alaon denied the charges: AAA's family merely fabricated the charge in retaliation to their eviction from the land which Alaon owned.

The Provincial Prosecution Office of Daet, Camarines Norte found probable cause to indict Alaon for three (3) counts of rape under Article 266-A of the Revised Penal Code in relation to Republic Act No. 7610, The Special Protection of Children Against Abuse, Exploitation and Discrimination Act, docketed as I.S. No. 2002-10728.

Acting favorably on Alaon's Motion for Reconsideration, the Provincial Prosecutor downgraded the offense from *rape* to *acts of lasciviousness*, ratiocinating, thus:

Going over the arguments presented in this case despite absence of comment from the complainant, we posit (sic) that these grounds raised in said motion are all evidentiary in character except as to the alleged physical impossibility on the part of the accused to commit the crime as charged which merits further scrutiny. Guided by the decision in *US v. Tan x x x* and *People v. Domondon x x x*, "thus, a man who threw a girl 7-10 years old upon the floor, placed his private parts upon or over hers, and remained in that position or made motions of sexual intercourse, is guilty of acts of lasciviousness," undersigned was constrained to reconsider the assailed resolution considering the undisputed state of the accused who at the time of the alleged commission is 73 years old.

WHEREFORE, considering the aforementioned and the absence of any other incriminating evidence other than the passing statement of the victim, it is imperative to modify our assailed resolution from rape to acts of lasciviousness which best suits (sic) the evidence at hand.

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<sup>3</sup> The real name of the victim, its immediate family members and its address are withheld as per Republic Act No. 7610 and Republic Act No. 9262. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

Let an Information for Acts of Lasciviousness be filed against accused recommending the amount of ₱12,000.00 for his provisional liberty.<sup>4</sup>

Consequently, an Information against Alaon was filed before the Regional Trial Court (RTC), Branch 64, Labo, Camarines Norte, docketed as Criminal Case No. 03-1021:

That in the afternoon of October, 2002 at Purok 2, Barangay Poblacion, Sta. Elena, Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and motivated by bestial lust, by means of force and intimidation, did, then and there willfully, unlawfully and feloniously commit an [*sic*] acts of lasciviousness upon the person of AAA, 17 years old, against her will and to her damage.<sup>5</sup>

On 28 January 2003, then Secretary of Justice Simeon Datumanong (Secretary of Justice), directed the Provincial Prosecutor of Camarines Norte to: (1) forward the entire records of the case for automatic review, citing “the interest of justice and pursuant to the residual authority of the Secretary of Justice of supervision and control over the prosecutors of the Department of Justice;” and (2) defer the filing of the Information for acts of lasciviousness against Alaon, or, in the event an Information has been filed in court, move for suspension of proceedings against Alaon, “in order not to render the automatic review moot and academic.”

The Secretary of Justice’s directive was based on a letter of BBB, AAA’s mother, narrating what happened to AAA who is said to be suffering from an intellectual disability.<sup>6</sup>

Forthwith, on 11 February 2003, the 3<sup>rd</sup> Assistant Provincial Prosecutor, Carmel Josa Auro Estrellado (Prosecutor Estrellado), sent a letter to Presiding Judge Leo Intia (Judge Intia) requesting the withdrawal of the Information for Acts of Lasciviousness in compliance with Secretary Simeon Datumanong’s directive mistakenly assuming that Alaon filed a petition for review before the Secretary of Justice.

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<sup>4</sup> *Rollo*, p. 51

<sup>5</sup> *Id.* at 52.

<sup>6</sup> Now the preferred term for mental retardation. See <http://www.webmd.com/children/intellectual-disability-mental-retardation> last visited 23 March 2014.

On that same day, Judge Intia, for the issuance of a warrant of arrest, separately found probable cause for the crime of Acts of Lasciviousness against Alaon. However, Judge Intia took into consideration the contents of Prosecutor Estrellado's letter and held in abeyance the issuance of the warrant of arrest pending the resolution of the petition for review. Judge Intia likewise directed Prosecutor Estrellado to submit a copy of the petition for review before the trial court.

The next day, 12 February 2003, the RTC acting on the letter of Prosecutor Estrellado, suspended the proceedings in Criminal Case No. 03-1021 in accordance with Section 11, Rule 116 of the Rules of Court.

On 26 February 2003, Prosecutor Estrellado filed an Explanation/Manifestation clarifying that:

x x x x

2. The undersigned erred in concluding that a petition for review was filed by the accused as indeed, the accused never did;
3. The undersigned realized such honest mistake only when the mother of the victim in this case appeared before her on 24 February 2003 as it was at this time that she was informed that there actually was no formal petition for review filed by said complainant. According to her, she simply asked for the assistance of the Department of Justice Central Office to review the Supplemental Resolution of the Provincial Prosecutor in modifying the previous resolution issued thereon and in changing the designation of the offense from Rape to Acts of Lasciviousness.<sup>7</sup>

Alarmed, Alaon filed a Manifestation with Urgent Motion to Set Case for Arraignment with a prayer to lift the RTC's suspension of proceedings and to immediately set the case for arraignment in accordance with an accused's right to speedy trial.

The RTC issued an Order: (1) granting Alaon's motion and setting the case for arraignment; and (2) confirming the earlier finding of judicial probable cause against Alaon for the crime of Acts of Lasciviousness.

During arraignment on 11 June 2003, Alaon entered a plea of not guilty.

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<sup>7</sup> *Rollo*, p. 57

Apparently confused, Prosecutor Estrellado, on the following day, 12 June 2003, filed a motion to withdraw appearance, insisting that the case remained pending review by the Secretary of Justice and as such, has been directed to withdraw appearance from the case.

On 25 June 2003, the RTC issued an Order denying Prosecutor Estrellado's motion:

The grounds relied upon by the 3<sup>rd</sup> Assistant Provincial Prosecutor Carmel Josa Estrellado is not a valid ground for withdrawing her appearance as Public Prosecutor in this case. If it is true that there is a pending petition for review filed with the Department of Justice, suspension of the proceedings of this case is the proper recourse in accordance with Sec. 11, Rule 117 of the Revised Rules of Criminal Procedure, not withdrawal of appearance. x x x The withdrawal of appearance by Assistant Prosecutor Carmel Josa Estrellado upon the directive of the Provincial Prosecutor is tantamount to dereliction of duty which this court shall not allow.

WHEREFORE, the Motion to Withdraw Appearance is hereby DENIED.

Furnish copy of this order also to the Secretary of Justice, Hon. Simeon A. Datumanong.<sup>8</sup>

Taking cue from the RTC's latest Order, Prosecutor Estrellado filed a Motion to Suspend Proceedings which Alaon opposed.

On 31 July 2003, the RTC issued an Order denying the Motion to Suspend Proceedings, ruling that the grounds for suspension listed in Section 11, Rule 116 of the Rules of Court are wanting. The RTC likewise set pre-trial of the case on 27 August 2003.

Trial of the case ensued.

On 18 March 2008, with the propriety of the offense charged still at issue within the prosecution, specifically the DOJ, then Undersecretary of the DOJ, Ernesto Pineda, issued the previously adverted to Resolution, setting aside the downgrading of the crime charged against Alaon from rape to acts of lasciviousness. The DOJ reinstated the previous charge of rape

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<sup>8</sup> Id. at 67.

against Alaon and directed the filing of an Information against him for three (3) counts of rape in relation to Republic Act No. 7610.

Alaon thus filed a petition for *certiorari* before the Court of Appeals assailing the Resolution of the DOJ for being issued in grave abuse of discretion.

On 25 March 2009, the appellate court granted Alaon's petition and annulled the Resolution of the DOJ, finding grave abuse of discretion in its issuance. The Court of Appeals ratiocinated that while the Secretary of Justice had the power to review resolutions or decision of provincial or city prosecutors or the Chief State Prosecutor, review must be done within the parameters set forth in the 2000 National Prosecution Service Rules on Appeal.<sup>9</sup> For the Court of Appeals, BBB's letter clearly did not comply with the requirements for taking an appeal by way of petition for review from the prosecutor's resolution of a criminal case at the preliminary investigation stage. More importantly, the accused, Alaon, in this case, was "deprived of his right to procedural due process, as he was not given the opportunity to be heard by filing a comment or opposition thereto." Ultimately, the Court of Appeals held that "in treating the letter-request as an appeal from the Provincial Prosecutor's Supplemental Resolution, and in issuing the assailed Resolution directing the filing of the corresponding information for three (3) counts of rape against [Alaon] on the basis thereof, the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction."

Hence, this petition for review on *certiorari*.

The DOJ ascribes grave error in the appellate court's decision and posits that:

I.

THE DOJ SECRETARY MAY *MOTU PROPIO* REVIEW THE RESOLUTION OF A PROSECUTOR EVEN IN THE ABSENSE OF AN APPEAL OR A PETITION FOR REVIEW BEING FILED BY ANY AGGRIEVED PARTY; AND,

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<sup>9</sup> See <http://dojregionaloffice1.files.wordpress.com/2009/03/dc70.pdf> last visited 24 March 2014.

## II.

[ALAON] WAS CHARGED WITH KNOWLEDGE OF THE PENDENCY OF THE PRIVATE COMPLAINANT'S MOTHER'S APPEAL BEFORE THE DOJ, HENCE, HE CANNOT COMPLAIN THAT HE WAS NOT GIVEN NOTICE OF THE SAME AND THE OPPORTUNITY TO BE HEARD.<sup>10</sup>

We are not persuaded. However, we cannot accept in its entirety the reasons behind the finding of the appellate court.

Initially, we note that the DOJ and even Alaon did not apprise this Court about the status of Criminal Case No. 03-1021 before the RTC. As we shall hereafter dispose of the matter before us, we see no reason to order that the trial that had begun be held in abeyance.

The Secretary of Justice did not abuse his discretion when he acted on the letter request of BBB, the mother of the victim, AAA.

There is no quarrel about the Secretary of Justice's power of review over the actions of his subordinates, specifically public prosecutors. This power of review is encompassed in the Secretary of Justice's authority of supervision and control over the bureaus, offices, and agencies under him, subject only to specified guidelines.<sup>11</sup>

Chapter 7, section 38, paragraph 1 of Executive Order No. 292 or The Administrative Code of 1987, defines the administrative relationship that is **supervision and control**:

**SECTION 38.** Definition of Administrative Relationships. — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

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<sup>10</sup> *Rollo*, p. 20.

<sup>11</sup> Executive Order No. 292, Section 39.

Sec. 39. *Secretary's Authority.*— The Secretary shall have supervision and control over the bureaus, office, and agencies under him, subject to the following guidelines:

(a) Initiative and freedom of action on the part of subordinate units shall be encouraged and promoted, rather than curtailed, and reasonable opportunity to act shall be afforded those units before control is exercised;

(b) With respect to functions involving discretion, experienced judgment or expertise vested by law upon a subordinate agency, control shall be exercised in accordance with said law; and

(c) With respect to any regulatory function of an agency subject to department control, the authority of the department shall be governed by the provisions of Chapter 9 of this book.

(1) Supervision and Control. — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; **direct the performance of duty**; restrain the commission of acts; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word “control” shall encompass supervision and control as defined in this paragraph.

In *Noblejas v. Judge Salas*,<sup>12</sup> we defined control as the power (of the department head) to alter, modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. The power of control implies the right of the President (and, naturally, of his alter ego) **to interfere** in the exercise of such discretion as may be vested by law in the officers of the national government, as well as to act in lieu of such officers.

Founded on the power of supervision and control over his subordinates, we do not find abuse of discretion, much more grave abuse of discretion, by the Secretary of Justice when he took cognizance of BBB’s letter and treated it as a petition for review from the provincial prosecutor’s resolution. It cannot be said that in this case, there was an “absence of a petition for review.” There was in fact an appeal from the prosecutor’s resolution, although not as described in the National Prosecution Service Rules on Appeal. There was, tersely put, an appeal that the Secretary of Justice had ample power to act upon. In fact, the Secretary of Justice acted on the letter request of BBB. What was done was not a *motu proprio* review.

Nonetheless, we agree with the appellate court’s holding that Alaon was deprived of his right to procedural due process, as he was not given an opportunity to be heard on the letter-appeal of private complainant’s mother.

The conduct of preliminary investigation is subject to the requirements of both substantive and procedural due process. Preliminary investigation is considered as a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-

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<sup>12</sup> 160-A Phil. 177, 188 (1975).



judicial officer.<sup>13</sup> Even at the stage of petition for review before the Secretary of Justice, the requirements for substantive and procedural due process do not abate.

The DOJ makes much of the fact that Alaon ostensibly knew of BBB's appeal to the Secretary of Justice.

This assertion of the DOJ cannot equate to compliance with procedural due process. To begin with, Prosecutor Estrellado mistakenly thought that Alaon had filed a petition for review. The confusion got clarified only after Judge Intia required the prosecutor to submit a copy of the petition for review. Thereafter, Alaon also made a manifestation raising the error in the prosecutor's assertion, and moved for the lifting of the suspension of proceedings and setting the arraignment of the case.

What Alaon eventually learned is that the records of I.S. No. 2002-10728 were with the Secretary of Justice for his review. Alaon cannot be charged with notice that the Secretary of Justice had treated the letter of BBB as a petition for review. Notice in this case, as a function of an opportunity to be heard, a component of procedural due process, was not met. Once the Secretary of Justice decided to treat the letter of BBB as an appeal, he should have required Alaon to comment thereon. Even if the letter did not comply with the requirements for an appeal under the 2000 National Prosecution Service Rules on Appeal, indeed, precisely for such reason, the Secretary of Justice was duty-bound, as the one hearing the case, to afford Alaon, respondent therein, an opportunity to be heard to satisfy procedural due process. On this score, the DOJ abused its discretion when it rode roughshod over Alaon's rights as it accommodated private complainant.

With our holding that the Secretary of Justice acted in excess of jurisdiction when he failed to afford Alaon an opportunity to be heard on private complainant's letter which he deemed as a petition for review, we affirm the appellate court's issuance of the special writ of *certiorari*, annulling the 18 March 2008 Resolution of the DOJ.

Section 1, Rule 65 of the Rules of Court requires the concurrence of two elements for the issuance of a writ of *certiorari*: (1) that a tribunal, board or officer exercising judicial or quasi-judicial functions has acted

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<sup>13</sup> *Arroyo v. Department of Justice*, G.R. No. 199082, 18 September 2012, 681 SCRA 181, 217.

without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; **and** (2) there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law.

In this case, the propriety of the charge against Alaon for Acts of Lasciviousness has already been judicially confirmed by the trial court when it found probable cause for the issuance of a warrant of arrest.<sup>14</sup>

However, even with the trial court's judicial confirmation of a *prima facie* case against Alaon for the crime of Acts of Lasciviousness and its apparent authority and jurisdiction to hear and dispose of the case as it sees fit, we still do not find a plain, speedy and adequate remedy under the ordinary course of law which Alaon could have availed of against the 18 March 2008 Resolution of the DOJ.

We are not unaware of the point raised by the Office of the Solicitor General, on behalf of the DOJ, that the disposition of the case, whether a dismissal or continuance, or the withdrawal and substitution of the Information to one charging three (3) counts of rape against Alaon, rests on the sole discretion of the trial court. The intimation, of course, is that Alaon should have availed of the remedies within the trial proceedings and not before the DOJ.

*Crespo v. Judge Mogul*,<sup>15</sup> and succeeding jurisprudence thereafter, teach us that:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. **The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.** A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. **It does not matter if this is done before or after the arraignment of the accused or that the motion was**

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<sup>14</sup> The determination of probable cause by the prosecutor, at the preliminary investigation stage, is for the purpose of determining whether a crime has been committed and if the accused is probably guilty thereof. The court's judicial determination of probable cause, on the other hand, is for purposes of the issuance of a warrant of arrest.

<sup>15</sup> 235 Phil. 465 (1987).

**filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.**<sup>16</sup> (Emphasis supplied).

While there are possible remedies available to Alaon before the trial court, these are not necessarily plain, speedy and adequate remedies. For one, Alaon will have to await action by the handling prosecutor before he can file the pleading corresponding thereto. The fact remains that the 18 March 2008 Resolution of the DOJ containing specific directives upon the Provincial Prosecutor: (1) to file an Information against Alaon for three (3) counts of rape in relation to Republic Act 7610; (2) with the entire records of the case forwarded to him for appropriate action; and (3) to report the action taken thereon within ten (10) days from receipt thereof, would still stand if not for the writ of *certiorari* issued by the appellate court. Tainted as it is with grave abuse of discretion resulting from a denial of due process, the questioned resolution should not hamper the exercise of the trial court of its mandated jurisdiction.

**WHEREFORE**, the appeal is **DENIED**. The Decision of the Court of Appeals in CA-G.R. SP No. 103816 annulling and setting aside the 18 March 2008 Resolution of petitioner Department of Justice in I.S. No. 2002-10728 is **AFFIRMED**. No pronouncement as to costs.

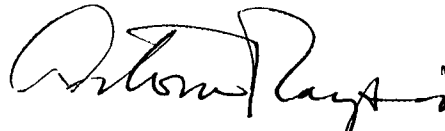
**SO ORDERED.**

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

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<sup>16</sup> Id. at 476.

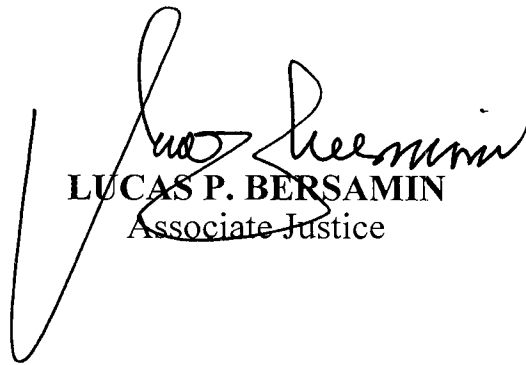
WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ARTURO D. BRION**  
Associate Justice



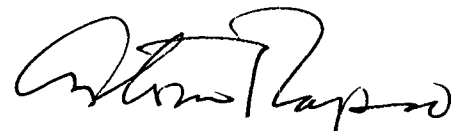
**LUCAS P. BERSAMIN**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
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.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



**MARIA LOURDES P. A. SERENO**  
Chief Justice