

FILE NO : _____
ROUTE TO : RJM
BS/af

Republic of the Philippines
REGIONAL TRIAL COURT
Fourth Judicial Region
Branch 54
Lucena City

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case Nos. 2014 – 149;
2014 – 150; 2014 – 151

-versus-

For: Violation of Art. III,
Section 5(b), R.A. 7610

PERECTO LUCHAVEZ,
Accused.

X-----X

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case Nos. 2014 – 148;
2014 – 150; 2014 – 151

Crim. Case No. 2014 – 153

-versus-

For: Violation of Art. III, Section
5(b), R.A. 7610 and Art. 266-A
Par. 2, in rel. to Art. 266-B of the
RPC, as amended by R.A. 8353

MARK JAYROLD A. LUCHAVEZ,
Accused.

X-----X

ORDER

For resolution is the Motion for Reconsideration¹ of the Order dated November 27, 2014, invalidating the warrantless arrest of both accused and denying the Motion to Quash² the Informations dated January 30, 2014 for three (3) counts of violation of Article III, Section 5(b) of R.A. 7610 against accused Perfecto Luchavez, Jr. and one (1) count of violation of Article III, Section 5(b) of R.A. 7610 and one (1) count of violation of Article 266-A,

¹ records.

² id.

paragraph 2, in relation to Article 266-B of the Revised Penal Code, as amended by R.A. 8353 against accused Mark Jayrold A. Luchavez.

Both accused contend that the court has no jurisdiction over them since they were not validly arrested and have not submitted themselves to the jurisdiction of the court; that their posting of bail is not tantamount to submission to the jurisdiction of the court over their persons; and that the DOJ Resolution dated January 30, 2014³ cannot be considered as evidence against them.

In their comment/ opposition⁴, the private complainants argued that the illegality of the arrest did not affect the validity of the Informations filed.

In their Reply⁵, both accused maintained that since the warrantless arrest was declared invalid, the court did not acquire jurisdiction over them, and the finding of probable cause does not vest the court with jurisdiction over their persons.

The public prosecutor, in his Rejoinder⁶, avers that the illegality of the arrest stands only insofar as the charge of violations of R.A. 9208⁷ as amended by R.A. 10364⁸ is concerned and has nothing to do with the Informations filed for violations of R.A. 7610 and Article 266-A, paragraph 2, in relation to Article 266-B of the Revised Penal Code against accused after the conduct of preliminary investigation.

The court finds no cogent reason to reverse and set aside the Order dated November 27, 2014, denying the motion to quash the Informations filed.

At the onset, it bears stressing that when the accused were brought before the Department of Justice for the conduct of inquest proceedings for trafficking in persons, both waived their rights under Article 125 of the Revised Penal Code and opted to submit their joint counter-affidavit to the complaints against them. After preliminary investigation, the investigating prosecutor dismissed the complaint for trafficking in persons. Instead the investigating prosecutor found probable cause and indicted them for child abuse under R.A. 7610 and sexual assault under Article 266-A, paragraph 2, in relation to Article 266-B of the Revised Penal Code, as amended by R.A. 8353.

³ pages 3-30, records.

⁴ Comment/ Opposition (to Accused Motion for Reconsideration) dated January 13, 2015, id.

⁵ Reply (Re: Comment/ Opposition dated January 13, 2015) dated January 21, 2015, id.

⁶ dated February 4, 2015 and filed with the court on February 6, 2015, id.

⁷ Anti-Trafficking in Persons Act

⁸ Expanded Anti-Trafficking in Persons Act of 2012

It is undisputed that the investigating prosecutor dismissed the complaint for trafficking in persons against both accused as it found no probable cause to indict them for trafficking in persons. The court declared their warrantless arrest as invalid as it was not in the purview of Section 5, Rule 113 of the Rules of Court.

It cannot also be denied that the present charges against the accused are based on the complaints of child abuse and sexual assault, and are the result of the findings of the investigating prosecutor after the conduct of a preliminary investigation. Indeed, the investigating prosecutor is afforded with wide latitude of discretion in the conduct of a preliminary investigation to determine the proper charge against the accused. It is settled that the prosecutor is not bound by the qualification of the crime but by the evidence presented during preliminary investigation.⁹

The Supreme Court has held that it is a sound judicial policy to refrain from interfering in the conduct of preliminary investigations, and to just leave to the Department of Justice the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders.¹⁰ Thus, the prosecutor's finding of probable cause is entitled to the highest respect.

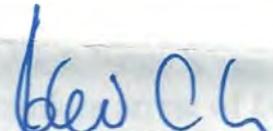
In these present cases, the court can very well acquire jurisdiction over the persons of the accused, not by means of apprehension but on the basis of the Informations filed against them for violation of Article III, Section 5(b) of Republic Act 7610 and Article 266-A paragraph 2, in relation to Article 266-B of the Revised Penal Code as amended by Republic Act 8353 child abuse and sexual assault. The informations filed are valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the investigating prosecutor.

WHEREFORE, the Motion for Reconsideration is DENIED.

Set the arraignment of both accused on April 17, 2015 at 8:30 o'clock in the morning.

SO ORDERED.

Lucena City, March 9, 2015


ROBERT VICTOR C. MARCON
Presiding Judge

RVCM/joseph

⁹ Orquinaza vs. People, G.R. No. 165596, November 17, 2005

¹⁰ Marie Callo-Claridad v. Philip Ronald P. Esteban, et al., G.R. No. 191567, March 20, 2013.