Office of the President
of the Philippines
Malacañang

ALAN DALE EDMONDS,
Complainant-Appellee,

-versus-

O.P. CASE No. 00-J-9253

FR. SHAY CULLEN,
Respondent-Appellant.
x----------x

DECISION

This refers to the motion of appellee Alan Dale Edmonds seeking reconsideration of this Office's decision dated December 7, 2000 which ordered the dismissal of the complaint for rape against appellant Fr. Shay Cullen.

Appellee contends that the said decision was issued in violation of law and jurisprudence considering that it is the trial court, not this Office, which has jurisdiction over the case, and that appellant is a fugitive from justice. He likewise contends that this Office has no authority to rule on the merits of the case since it neither has power to impose penalties nor acquit appellant. He insists that the victim's narration of the incident deserves credence.

After due consideration of the instant motion, this Office finds that the same should be dismissed for lack of merit.

It must be clarified that the case decided by this Office is the appeal filed by appellant questioning the resolution of then Justice Secretary Artemio G. Tuquero which found probable cause against him for the commission of the crime of rape. This Office merely exercised its jurisdiction pursuant to Memorandum Circular (M. C.) No. 58, series of 1993, which empowers this Office to review the resolutions issued by the Secretary of Justice concerning preliminary investigation of criminal cases wherein the imposable penalty is reclusion perpetua or death, as in the instant case. It cannot be overemphasized that this Office did not exercise the jurisdiction to try and decide criminal cases which is properly lodged in the trial courts. The fact that an information against appellant has already been filed in the Regional Trial Court, Branch 72, Olongapo City, does not deprive this Office of its jurisdiction to review said resolution of the Secretary of Justice.

Although, in Crespo v. Mogul, 151 SCRA 462 (1987), the Supreme Court held that:

> "In order therefor to avoid such a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in court. The matter should be left entirely for the determination of the court."

The Supreme Court clarified, in Roberts v. Court of Appeals, 254 SCRA 307 (1996), that:

> "There is nothing in Crespo vs. Mogul which bars the DOJ from taking cognizance of an appeal, by way of a petition for review, by an accused in a criminal case from an unfavorable ruling of the investigating prosecutor. It merely advised the DOJ to, 'as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in court'."

In Marcelo vs. Court of Appeals (235 SCRA 39 [1994]), it explicitly declared:

> "Nothing in the said ruling forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases. The Secretary of Justice is only enjoined to refrain as far as practicable from entertaining a petition for review or appeal from the action of the prosecutor once a complaint or information is filed in court. In any case, the grant of a motion to dismiss, which the prosecution may file after the Secretary of Justice reverses an appealed resolution, is subject to the discretion of the court."

Hence, appeal to the Secretary of Justice or even to this Office is not prohibited. The Supreme Court merely requires that the decision on the appeal from the resolution of the prosecutors, whether modification of the crime charged or dismissal of the complaint against the respondents, should be presented by the fiscal to the trial court in the form of a motion for its appropriate action.

In reviewing the resolutions of the Secretary of Justice pursuant to M.C. No. 58, series of 1993, this Office reviews finding of probable cause against respondents who are facing criminal complaints punishable by reclusion perpetua to death. In so doing, ruling on the preliminary merits of the cases, that is, the existence or absence of probable cause against respondents, is inevitable. However, the review involved is not a trial of the case on the merits. Its purpose is merely to review the finding of probable cause, that is, whether a crime has been committed and whether there is probable cause to believe that respondents are guilty thereof. It is noteworthy that the preliminary investigation, and the review of the result of same by this Office are intended to protect both the respondents

from the inconvenience, expense and burden of defending themselves in a formal trial, and the state from having to conduct useless and expensive trials (Tandoc v. Resultan, 175 SCRA 37, 43 [1989]). The fact that this Office has no power to impose penalty is beside the point. This Office is not a court but it is mandated to review the decisions of the Secretary of Justice concerning preliminary investigations of criminal cases punishable by reclusion perpetua to death.

Appellee's insistence that appellant raped the victim is neither impressive nor persuasive. As stated in this Office's decision dated December 7, 2000, the handwritten complaint of the alleged victim merely stated that "*ni-reyp [siya] ng pari na si Cullens*" (sic)" (she was raped by the priest named Cullen). No details as to the manner the alleged rape was committed by appellant was supplied in her complaint. It is even doubtful that at her tender age of seven (7) years, she really knows the meaning of "rape". As correctly pointed out by Asst. Provincial Prosecutor Lasam in his order dismissing the complaint, Ronald Payumo and Oliver Edmonds were the ones the victim originally accused of sexually abusing her for at least twelve (12) times. The victim even said that her father, herein appellee, did nothing when she told him about these abuses in the hands of Ronald Payumo and Oliver Edmonds. Appellee's apparent inaction was the precise reason why the DSWD and PREDA took protective custody of the victim beginning January 29, 1998.

Moreover, the nine-month unexplained delay in reporting the alleged rape weakens the victim's credibility. There is no claim that violence, threats or intimidation was exerted on her by appellant to silence her. In fact, during her entire stay at PREDA from January 29, 1998 up to February 25, 1998, appellee frequently visited her but there is no indication in the records that the victim complained to him about the alleged rape. Furthermore, when she was transferred to DSWD-Lingap Center upon order of the court on February 26, 1998, she also failed to disclose to the authorities that appellant raped her. In fact, when she was thereafter interviewed and psychologically evaluated by the DSWD personnel, she reaffirmed to them her previous revelation that Ronald Payumo and her own brother Oliver have been sexually molesting her.

It is settled that unexplained delay in reporting a crime renders the accusation unreliable in the absence of showing that force, coercion, threat or intimidation was exerted by the culprit on the victim (People v. Besa, 183 SCRA 533 [1990]). It is not enough to presume that a girl would not expose herself to humiliation unless her charge of rape is true. For the charge to succeed, it is also necessary that her story, by itself, is believable, independent of the said presumption. Otherwise, if all that mattered were this presumption, every accusation of rape would inevitably result, without need of other evidence, in the indictment and conviction of the accused (People v. Sandagon, 233 SCRA 108 [1994])

Lastly, anent the claim that appellant is a fugitive from justice, there is no clear showing that a warrant of arrest has been issued against him and that he has been evading service of the same. Neither is there showing that the trial of the case against appellant has commenced and that he fled from the same. A mere claim or allegation is not

evidence, and the party who alleges a matter has the burden of proving it, otherwise the same should be dismissed (Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, 265 SCRA 733 [1996]).

WHEREFORE, the instant motion for reconsideration is hereby ***DENIED*** for lack of merit.

SO ORDERED.

Manila, Philippines, 05 FEB 2003

By authority of the President:

MANUEL B. GAITE
Acting Deputy Executive Secretary
for Legal Affairs
VSCM/r
02/05/03

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copy for:

City Prosecutor of Olongapo
City Hall, Olongapo City

Department of Justice
Manila

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