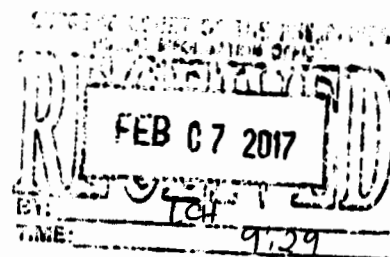




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



ATTY. ALLAN S. HILBERO,
Petitioner,

G.R. No. 198760

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

- versus -

FLORENCIO A. MORALES, JR.,
Respondent.

Promulgated:

JAN 11 2017

X ----- X

DECISION

LEONARDO-DE CASTRO, *J.*:

Petitioner Atty. Allan S. Hilbero, through the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, assails the Decision¹ dated June 7, 2011 of the Court of Appeals in CA-G.R. SP No. 111191, which (a) modified the Resolution² dated September 30, 2009 of the Department of Justice (DOJ) in I.S. No. 1428-07 finding probable cause to charge respondent Florencio A. Morales, Jr., along with Primo J. Lopez (Primo), Lorenzo M. Pamplona (Lorenzo), and Sandy M. Pamplona (Sandy), with the murder of petitioner's father, Atty. Demetrio L. Hilbero (Demetrio); and (b) ordered the dropping of the criminal charge against respondent.

The antecedent facts are as follows:

Based on the initial criminal investigations conducted by the Calamba City Police Station,³ on June 16, 2007, Demetrio and his wife, Estela S. Hilbero (Estela), had just attended the Saturday evening anticipated mass at the Calamba Catholic Church. Spouses Demetrio and Estela then proceeded to Demetrio's law office located along Gen. Lim St., Barangay 5, Calamba

¹ *Rollo*, pp. 29-43, penned by Associate Justice Danton Q. Bueser with Associate Justices Hakim S. Abdulwahid and Mario V. Lopez concurring.

² *CA rollo*, pp. 126-134.

³ *Rollo*, pp. 113-114 and 118-122; Spot Investigation Report No. CNR CLBE-0616-21 and Progress Report[s] Re: Murder of Atty. Demetrio Lugo Hilbero dated June 20, 2007, July 4, 2007, and July 20, 2007 issued by the Calamba City Police Station.

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City, arriving at said office around 7:45 p.m. Estela alighted first from their car and immediately went inside the office, while Demetrio went to a nearby store to buy cigarettes. When Demetrio was about to enter the gate of his office, two armed men on-board a motorcycle suddenly appeared and shot Demetrio several times. The gunmen escaped towards the adjacent Mabini Street.

Estela thought that the gunshots were mere firecrackers, but when she checked, she found Demetrio sprawled on the ground. Estela cried for help. Demetrio was rushed to the Calamba Medical Center where he was pronounced dead on arrival. Initial medico-legal findings revealed that Demetrio sustained three gunshot wounds on the left side of his body.

Three spent shells and one deformed slug of a .45 caliber pistol were recovered from the crime scene. A cartographic sketch of one of Demetrio's assailants was made based on the descriptions given by eyewitnesses to the shooting incident. Demetrio's relatives also informed police investigators that Demetrio was heard having a heated argument on the telephone with an unknown caller inside his office at around 12:30 p.m. on June 16, 2007. Demetrio seemed bothered and anxious after said telephone conversation.

On December 26, 2007, P/Supt. Mariano Nachor Manaog, Jr. of the Laguna Criminal Investigation and Detection Team (CIDT-Laguna) forwarded to the Calamba City Prosecution Office (CCPO) the records of the investigation relative to Demetrio's killing. Among the documents submitted was a *Sinumpaang Salaysay*⁴ dated December 26, 2007 executed by Reynaldo M. Leyva (Reynaldo), an alleged eyewitness to the shooting of Demetrio. In his *Sinumpaang Salaysay*, Reynaldo recounted:

SINUMPAANG SALAYSAY

AKO, si Reynaldo M. Leyva, may sapat na gulang, at nakatira sa Brgy. Real Calamba City, matapos manumpa na naayon sa batas ay nagsasalaysay ng mga sumusunod:

NA noong Hunyo 16, 2007 ang oras sa pagitan ng 7:00 at 8:00 ng gabi, ako noon ay papunta sa Mercury Drug sa may lumang palengke Calamba upang bumili ng gamot para sa aking ubo pagkatapos ko manggaling sa simbahan sa bayan ng Calamba, Laguna. Habang binabaybay ko ang Gen. Lim St., Calamba City, Laguna, papuntang Mercury Drug sa lumang palengke, ako ay napadaan sa Morales-Alihan Tax Accounting Firm at doon ay napansin ko ang isang motorsiklo na nakaparada na katabi ang dalawang tao na nag-uusap. Agad kong nakilala ang dalawang tao na iyon na sina Sandy Pamplona at Florencio Morales, Jr. Nakilala ko sila dahil si Florencio Morales, Jr. ay ka-barangay ko sa Real samantalang si Sandy Pamplona naman ay madalas ko rin makita sa Real.

⁴ Id. at 123-124.

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AKO ay nagpatuloy sa paglalakad papuntang Mercury Drug sa lumang palengke. Pagkatapos kong makabili ng gamot, ay nagpasya ako na bumili ng okoy sa may Gen. Lim St., Calamba City. Habang ako ay nandoon sa tindahan, may nakita akong kotseng kulay gray na pumarada sa isang bahay na halos katapat ng tindahan ng okoy na pinagbibilihan ko. Nakita ko ang isang babae na bumaba sa sasakyan at pumasok sa gate ng bahay. Ilang sandali pa, ang lalaki na nasa kotse naman ang bumaba ngunit hindi siya pumasok sa gate ng bahay. Namukhaan ko agad ang matandang lalaki na si Atty. Demetrio Hilbero dahil maliwanag naman sa lugar na kanyang kinatatayuan dahil sa ilaw sa bahay.

NA may bigla akong napansin na dalawang lalaki na nakasakay sa motorsiklo na biglang lumapit kay Atty. Hilbero habang siya ay nakatalikod. Isa sa mga lalaki ang biglang bumaba ng motorsiklo at bumunot ng baril at pinaputukan si Atty. Hilbero. Nakita kong bumagsak si Atty. Hilbero habang ang bumaril na lalaki ay agad sumakay sa motorsiklo, samantalang ang lalaki na naiwan sa motorsiklo ay nagpapatok rin ng baril pataas. Nakilala ko agad ang nasabing lalaki na si Lorie Pamplona dahil siya ay kabarangay ko din sa Real. Subalit ang lalaki na bumaril kay Atty. Hilbero ay hindi ko kakilala bagamat nakita ko ang kanyang mukha at kung makikita ko muli yung bumaril ay makikilala ko siya. Agad agad na umalis ang motorsiklo na lulan ang dalawang lalaki at sinundan sila ng isa pang motorsiklo na una kong nakita na nakaparada sa Morales-Alihan Accounting Firm na nadaanan ko kanina papuntang Mercury Drug pagkatapos silang senyasan ng bumaril kay Atty. Hilbero. Sakay sa nasabing motorsiklo si Sandy Pamplona na angkas naman si Florencio Morales, Jr.

NA, dahil sa pagkabigla sa aking nasaksihan ako ay hindi agad nakakilos sa aking kinalagyan. Nakita ko na lang ang asawa ni Atty. Hilbero na nagsisigaw at humihingi ng tulong. Ilang sandali pa, may mga tao ng tumulong at isang tricycle ang dumating at doon isinakay si Atty. Hilbero.

NA, dahil sa kalituhan ay agad agad ako na pumuntang palengke at sumakay sa tricycle pauwi ng Real.

Nang ako ay makauwi sa Real, wala akong pinagsabihan na tao sa aking nasaksihan. Natakot ako sa maaaring mangyari sa akin at sa aking mga anak kung irereport ko ang nakita ko sa pulisya ng Calamba.

NA, hindi ko nireport ang aking nasaksihan sa pulisya ng Calamba sa kadahilanan na ako ay nangangamba na si Lorie Pamplona ay maari akong balikan dahil alam ko na siya ay miyembro ng KALADRO na hawak ng isang pulis Calamba.

Ngunit habang tumatagal ang araw ay ako ay nababagabag ng aking kunsyensya. Lagi kong naiisip ang aking nasaksihan. Hanggang sa ako'y magpasya na pumunta na sa pulisya at ireport ang mga nakita ko. Pinili kong puntahan ang CIDG sa Cabuyao noong Disyembre 26, 2007 at sinabi sa kanila ang aking nasaksihan. May pinakitang mga larawan ang CIDG sa akin at doon ko nakilala at itinuro ang lalaki na bumaril kay Atty. Hilbero. Sinabi sa akin ng CIDG na ang pangalan ng aking itinuro ay si Primo Lopez na isa ring miyembro ng KALADRO. Si Primo Lopez ang



aking nakita na bumaril kay Atty. Hilbero kasama sina Lorie Pamplona, Sandy Pamplona, at Florencio Morales, Jr.

NA ginawa ko itong salaysay na ito upang tumestigo laban kina Primo Lopez, Lorie Pamplona, Florencio Morales, Jr., at Sandy Pamplona at iba pang sangkot sa pagpaslang kay Atty. Demetrio Hilbero.

The CCPO docketed the preliminary investigation of Demetrio's killing as I.S. No. 1428-07.

The Preliminary Investigation in I.S. No. 1428-07 by the ORSP-Laguna and the appeals before the DOJ

Acting on the voluntary inhibition of Prosecutor Miguel Noel T. Ocampo of the CCPO, Regional State Prosecutor Ernesto C. Mendoza officially designated Assistant Regional State Prosecutor Dominador A. Leyros (Leyros) as the Acting City Prosecutor of Calamba City in charge of I.S. No. 1428-07.⁵ Prosecutors Oscar T. Co and Elnora L. Nombrado of the Office of the Regional State Prosecutor of Region IV, San Pablo City, Laguna (ORSP-Laguna) joined Prosecutor Leyros in conducting the preliminary investigation.

In a Resolution⁶ dated May 6, 2008, the ORSP-Laguna stated that there was well-founded belief that Primo and Lorenzo were responsible for the murder of Demetrio and ordered that an information for murder under Article 248 of the Revised Penal Code, attended by the qualifying aggravating circumstance of night time, be filed against them. In the same Resolution, the ORSP-Laguna directed that the case against Sandy and respondent be dismissed for lack of sufficient evidence. The ORSP-Laguna evaluated the evidence before it, thus:

Primo Lopez was positively identified by the eyewitness Reynaldo M. Leyva as the gunman who shot Atty. [Demetrio] Hilbero, while x x x Lorenzo Pamplona was positively identified by the same eyewitness as the driver of the motorcycle where the gunman alighted before shooting Atty. [Demetrio] Hilbero and mounted the same after the shooting and sped away.

The defense of alibi presented by Lorenzo Pamplona cannot overcome the positive, clear and convincing identification made by the eyewitness as narrated in his sworn statement. His self-serving declaration that the witness has erred in identifying him affords him no respite. Neither the sworn statement of his witness purportedly seeing him and with him in a place other than the place of the shooting at the given time nor the production and submission of pictures and/or photographs depicting that he was in Baguio City on the fateful day of the shooting incident could extricate him from being indicted. They have no probative value to overcome the testimony of the eyewitness pointing to his possible

⁵ Id. at 129.

⁶ Id. at 48-51.

participation in the commission of the crime. The quantum of evidence necessary to put up a finding of probable cause is not proof beyond reasonable doubt or moral certainty for purposes of charging the respondent in criminal information before the courts. We can only restate the time honored principle that alibi is inherently weak and easily contrived. Furthermore, in the case before us there had been a positive identification made by the witness that x x x Primo Lopez and Lorenzo Pamplona are the perpetrators of the crime.

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With regard to x x x Sandy Pamplona and [respondent] Florencio Morales, Jr., we find no evidence had been introduced that may tend to establish their direct or indirect participation or cooperation in the commission of the crime. Even if we assume that what was stated by the witness Reynaldo M. Leyva in his sworn statement, in so far as x x x Sandy and [respondent] Florencio were concerned, was factual, still that would not be enough basis to include them in the indictment **in the absence of any other independent evidence**. For such alleged “thumb’s-up sign” allegedly executed by the gunman Primo Lopez immediately after shooting Atty. [Demetrio] Hilbero, and which the witness perceived to be a signal intended for the other two persons on board a motorcycle, that immediately sped off does not necessarily or absolutely mean that the two persons (Sandy and [respondent] Florencio) riding in tandem on a motorcycle were co-plotters in the crime committed. We cannot reasonably draw the inference from such events and conclusively assert that x x x Sandy Pamplona and [respondent] Florencio Morales, Jr., who happened to be there— if indeed they were there!, had anything to do with the murder of Atty. [Demetrio] Hilbero. What we have here is at best a suspicion, which is tantamount to doubt or skepticism. For that alleged “thumb’s-up sign” could be at risk to varying interpretation. It could be taken as a boastful expression for achieving an objective. It could also be a demonstration directed to nobody or such did not happen at all and was just perceived to be so. The speeding off of the other motorcycle after the shooting incident is just but a natural reaction of persons fleeing from danger. It is noteworthy to mention that other than the speeding off of the other motorcycle, which was allegedly boarded by x x x Sandy and [respondent] Florencio, no evidence was proffered to show that the latter participated or conspired before, during and after the commission of the crime of murder against Atty. [Demetrio] Hilbero. One could always speculate, however, but it is not evidence.

Lastly, the evidence for the prosecution in its entirety strongly implies the presence of all the elements of the crime of Murder perpetrated by x x x Primo Lopez and Lorenzo Pamplona.

Accordingly, an Information⁷ for murder against Primo and Lorenzo was filed before the Regional Trial Court (RTC) of Calamba City on May 15, 2008, docketed as Criminal Case No. 15782-2008-C.

Petitioner challenged before the DOJ the Resolution dated May 6, 2008 of the ORSP-Laguna in I.S. No. 1428-07 insofar as it found no sufficient evidence to indict Sandy and respondent for the murder of

⁷ CA rollo, p. 71.

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Demetrio. Primo and Lorenzo likewise assailed before the DOJ the same Resolution of the ORSP-Laguna for finding that there was probable cause to charge them for the murder of Demetrio.

The DOJ, through Secretary Raul M. Gonzalez (Gonzalez), issued a Resolution⁸ dated March 18, 2009, which (a) granted the appeal of Primo and Lorenzo and denied the appeal of petitioner; (b) reversed and set aside the Resolution dated May 6, 2008 of the ORSP-Laguna in I.S. No. 1428-07; and (c) directed the ORSP-Laguna to withdraw the Information against Primo and Lorenzo filed with the RTC and inform the DOJ of the action taken. DOJ Secretary Gonzalez reasoned in his Resolution that:

Culled from the records, it is undeniable that the entire case of the [petitioner] rests upon the statement of alleged eyewitness Reynaldo Leyva. Simply put, without his statement, there is nothing to hold [Primo, Lorenzo, Sandy, and respondent] for trial.

Thus, the bone of contention is whether or not such statement of Reynaldo Leyva is sufficient for purposes of indicting [Primo, Lorenzo, Sandy, and respondent].

After a thorough evaluation of the evidence on record, this Office is not convinced that probable cause exists to indict [Primo, Lorenzo, Sandy, and respondent] for the offense levelled against them.

While it is true that positive identification ordinarily prevails over alibi, it admits of qualifications as held in the case of *People v. Ondalok*, to wit:

“Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over the alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law.” (G.R. Nos. 95682-83, May 27, 1997)

In the instant case, [Primo, Lorenzo, Sandy, and respondent] allege that Reynaldo Leyva not only works for the [petitioner] but a relative as well. In addition, they claimed that said witness has an ax to grind against Florencio Morales, Sr. [father of respondent] the latter having impounded his motorcycle for having been involved in a crime.

Such allegations are imputations of motive on the part of the said witness to lie and the failure of the [petitioner] to refute the same bodes ill to the credibility of his witness. Had said witness really been present at the time of the incident, had he really been a relative and at the employ of the [petitioner], it behoves this Office why he did not rush to the aid of the victim even after the assailants had already left, why he waited more than six (6) months before coming out with what he supposedly know.

⁸ Id. at 81-86.

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In addition, there appears to be other pieces of evidence which had they been presented, would either corroborate or damage the statement of the said witness, among which is a picture from the CIDG where [Primo] was supposed to have been identified from by Reynaldo Leyva.

This Office is not oblivious to the jurisprudential declaration that “*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*” (Webb v. De Leon, 247 SCRA 652). However, we should also be mindful that the instant case is for the crime of murder, a non-bailable offense where a person stands to be deprived of his liberty. If in the first place we are not certain that the person committed the act imputed, it would not only be unwise but downright reckless for us to indict him in court.

To the mind of this Office, the statement of Reynaldo Leyva still leaves much to be desired with to convince us that [Primo, Lorenzo, Sandy, and respondent] were the ones who committed the crime.

Petitioner filed with the DOJ a Motion for Declaration of Nullity of the DOJ Resolution, or In the Alternative, For its Reconsideration.⁹ Petitioner alleged in his Motion that neither he nor his counsel were furnished a copy of DOJ Secretary Gonzalez’s Resolution dated March 18, 2009; petitioner only learned three days earlier that the CCPO had long received a copy of said Resolution (apparently forwarded by the ORSP-Laguna); and petitioner merely photocopied the copy of said Resolution of the CCPO. According to petitioner, there was a clandestine and deliberate design by some operators at the DOJ to conceal from petitioner the issuance of DOJ Secretary Gonzalez’s Resolution dated March 18, 2009, which invalidated the said Resolution. In the alternative, petitioner sought reconsideration of DOJ Secretary Gonzalez’s Resolution dated March 18, 2009 because: (a) based on Reynaldo’s testimony during the preliminary investigation before the ORSP-Laguna, Primo, Lorenzo, Sandy, and respondent were companions and confederates in the perpetration of the murder of Demetrio; (b) the preliminary investigation was not a trial on the merits; (c) Primo, Lorenzo, Sandy, and respondent were all positively identified; (d) the allegations of Primo, Lorenzo, Sandy, and respondent that Reynaldo is a relative of petitioner, worked for petitioner, and had an ax to grind against respondent’s father, were baseless and unsubstantiated; (e) Reynaldo’s supposed delay in coming forward as eyewitness did not affect his credibility as he explained that it was because he feared for his life and the safety of his family; (f) Reynaldo’s behavior after witnessing the murder of Demetrio, *i.e.*, failing to aid Demetrio and waiting six months before coming forward, was natural as there is no standard form of human behavioral response to a strange or frightful experience; (g) the allegations of Primo, Lorenzo, Sandy, and respondent were purely evidentiary, which should be tested in a full-blown trial; (h) the appeals of Primo and Lorenzo, who were fugitives from justice, should have been dismissed; and (i) there

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Id. at 87-108.

was no basis for dismissing the criminal complaint against Primo, Lorenzo, Sandy, and respondent without any evaluation of the issue of conspiracy.

Respondent, in his Comment & Opposition to Motion for Reconsideration filed by Allan S. Hilbero,¹⁰ defended DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Respondent contended that Reynaldo's averments in his *Sinumpaang Salaysay* were lies and fabrications. Respondent presented for the first time the *Kusang Loob na Salaysay* dated March 7, 2008 executed by Lydia M. Leyva-Alcaide (Lydia), purportedly Reynaldo's sister, who claimed that a certain Jesus Bengco repeatedly visited Lydia's home trying to convince Lydia's husband to present himself as an eyewitness to the killing of Demetrio in exchange for money, but Lydia's husband refused; if Lydia's husband truly witnessed the killing of Demetrio, he would not hesitate to come forward as a witness since Demetrio was their relative; Reynaldo was convinced to testify and identify Primo, Lorenzo, Sandy, and respondent as Demetrio's killers because Demetrio was their relative and Reynaldo received a sum of money; and Lydia was aware that Reynaldo had a grudge against respondent's family because respondent's father refused to help Reynaldo when Reynaldo's tricycle was impounded. Respondent additionally asserted that Reynaldo's statements on the killing of Demetrio were insufficient to hold Sandy and respondent liable for the crime, as their mere presence at the scene, assuming it to be true, was not evidence of conspiracy with the killers.

The DOJ, this time through Acting Secretary Agnes VST De Vanadera (De Vanadera), in its Resolution dated September 30, 2009, granted petitioner's motion for reconsideration and set aside DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Acting DOJ Secretary De Vanadera held that petitioner and/or his counsel were indeed not furnished with a copy of DOJ Secretary Gonzalez's Resolution dated March 18, 2009, which amounts to a denial of petitioner's right to file a motion for reconsideration. Nevertheless, Acting DOJ Secretary De Vanadera deemed it best to disregard the procedural issue, and dwell on the actual merits of the case, thus:

Clearly, the DOJ resolution [dated March 18, 2009] dwelt on the evaluation and interpretation of the probative value of the testimony of eyewitness Reynaldo Leyva even if such matter is not within the ambit of the prosecution's duty of finding probable cause. The matter is certainly evidentiary in nature and is best addressed to the trial court whose proximate contact with witnesses places it in a more competent position to discriminate between true and false testimony.

Perforce, we are not in the position to depart from the settled rule that positive identification, when categorical and consistent on the part of the eyewitness, prevails over the defense of alibi and denial (*People v. Dela Tonga*, 534 SCRA 135 [2007]). As between the self-serving

¹⁰ Id. at 109-125.

testimony of the accused [(Primo, Lorenzo, Sandy, and respondent)], and the positive identification by the prosecution witnesses, the latter deserves greater credence (*People v. Ducabo*, 534 SCRA 458 [2007]). Indeed, a witness who testifies that an event occurred is more credible and trustworthy than a witness who testifies to the non-happening of such event. An eyewitness' account is sterling since its accuracy and authenticity may be tested. In contrast, denials and alibi are inherently weak defenses for they are easy to concoct and difficult to disprove. Even if we assume for argument's sake that eyewitness Reynaldo Leyva's statement is tainted by improper motive, still, it is incumbent upon [Primo, Lorenzo, Sandy, and respondent] to show by clear and convincing evidence that their alibis and denials are feasible in the present case. Otherwise, their defenses cannot stand against the positive testimony of eyewitness Reynaldo Leyva. Likewise, [Primo, Lorenzo, Sandy, and respondent's] denials must be buttressed by strong evidence of non-culpability in order to merit credibility. Priscinding (sic) from these premises, [Primo, Lorenzo, Sandy, and respondent] have certainly failed to discharge such burden.

Moreover, it must be admitted that we overlooked the fact that the criminal information against x x x the persons of Primo Lopez and Lorenzo Pamplona was already filed with the Regional Trial Court of Calamba City, Laguna, and the corresponding warrants of arrest against them were already issued by said court. The said warrants of arrest were issued upon a judicial determination of probable cause by the judge assigned to handle the case. The finding of probable cause made by a judge is independent of any pronouncement in regard to probable cause made by the public prosecutor in the preliminary investigation. With this in mind, judicial determination of probable cause made by the judge should be accorded with respect and should not be disturbed as a matter of courtesy. On this score alone, the petitions for review of Primo Lopez and Lorenzo Pamplona must necessarily fail.

Again, we respect the doctrine enunciated in the case of *Crespo v. Mogul* (G.R. No. L-53373, June 30, 1987) that:

"In order therefore 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 the Court."

As regards Sandy Pamplona and [respondent] Florencio Morales, Jr. who were earlier cleared by the Office of the Regional State Prosecutor of Region IV for insufficiency of evidence, we find that there exists probable cause to indict them for murder. It is incontrovertible that a crime has been committed and the only question that remains unanswered would be the identity of the perpetrators. This fact was established by eyewitness Reynaldo Leyva when he positively identified x x x Pamplona and [respondent] as among the perpetrators.

In this case, [Primo, Lorenzo, Sandy, and respondent] appear to have conspired with each other in the commission of the crime. x x x

X X X X

A revisit of the statement of the eyewitness reveals that [respondent and Sandy] were not mere bystanders at the scene of the crime but, rather, they were active participants whose actions were indicative of a meeting of the minds towards a common criminal goal. They acted as lookouts to ensure the execution of the crime and the identification of the victim. It is highly unusual for mere bystanders to wait for the victim at the scene of the crime before its occurrence, stay there without budging from their positions while the crime is being executed and then finally leave the crime scene only after the crime was consummated and upon a signal from the gunman for them to flee. This theory of conspiracy by [petitioner] was further reinforced by the action of [respondent and Sandy] in fleeing from the crime scene together with Primo Lopez, the gunman, and Lorenzo Pamplona, riding in tandem in two motorcycles, at the same time and in the same direction. From all indications, [Primo, Lorenzo, Sandy, and respondent] acted in a synchronized and coordinated manner in carrying out the criminal enterprise, thus evincing the existence of conspiracy among them.¹¹

Acting DOJ Secretary De Vanadera decreed in the end:

WHEREFORE, premises considered, the motion for reconsideration is hereby **GRANTED**. The DOJ resolution [dated March 18, 2009] (Resolution 212, series of 2009) is hereby **RECONSIDERED** and **SET ASIDE**. Accordingly, the Office of the Regional State Prosecutor of Region IV, San Pablo City, is directed to file the necessary information for murder against x x x Primo Lopez, Lorenzo Pamplona, [respondent] Florencio Morales, Jr. and Sandy Pamplona, should the information filed earlier against x x x Primo Lopez and Lorenzo Pamplona was already withdrawn, otherwise, to cause the amendment thereof to include x x x Sandy Pamplona and [respondent] Florencio Morales, Jr. in the information as co-accused, and report the action taken hereon within ten (10) days from receipt hereof.¹²

In compliance with Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, Assistant City Prosecutor Joyce B. Martinez-Barut filed before the RTC a Motion to Admit Amended Information¹³ in Criminal Case No. 15782-2008-C. The Amended Information also charged Sandy and respondent for the murder of Demetrio:

AMENDED INFORMATION

The undersigned Assistant City Prosecutor-Designate accuses PRIMO LOPEZ y JAVIER, LORENZO PAMPLONA y MANAGA alias LORIE, FLORENCIO MORALES, JR. and SANDY PAMPLONA [y MAIQUEZ], of the crime of Murder committed as follows:

That on or about 8:00 p.m. of 16 June 2007, at Gen. Lim St., Calamba City, and within the jurisdiction of this Honorable Court, the

¹¹ Id. at 130-132.

¹² Id. at 133.

¹³ Id. at 292-293.



above-named accused conspiring and confederating, without justifiable cause, with intent to kill, treachery and abuse of superior strength, did then and there intentionally, willfully, unlawfully, and feloniously shoot Atty. Demetrio L. Hilbero causing the death of the latter, to the damage and prejudice of the heirs of the said victim.

That in the commission of the offense, the qualifying circumstances of treachery and abuse of superior strength were attendant.¹⁴

In its Order¹⁵ dated December 2, 2009, the RTC admitted the Amended Information and ordered the issuance of warrant of arrest against Primo, Lorenzo, Sandy, and respondent. The Warrant of Arrest¹⁶ for the four named accused was subsequently issued on June 10, 2010.

***Respondent's Special Civil Action
for Certiorari under Rule 65 of the
Rules of Court in CA-G.R. SP No.
111191 before the Court of Appeals***

Respondent assailed Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 directly before the Court of Appeals *via* a Petition for *Certiorari*¹⁷ under Rule 65 of the Revised Rules of Court, without first filing a motion for reconsideration of the said resolution. Respondent's Petition was docketed as CA-G.R. SP No. 111191.

Respondent explained that he dispensed with the filing of a motion for reconsideration before the DOJ because that would just be an exercise in futility. Respondent argued that Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was "a patent nullity rendered in excess of or want of jurisdiction; the [question] being raised having been duly raised and erroneously passed upon by the [DOJ]; and there [being] an extreme urgency of resolving the issues raised as the [respondent] will surely be deprived of due process and liberty since an Information will be railroaded and the warrant of arrest issued without properly determining probable cause."¹⁸ Respondent pointed out that Acting DOJ Secretary De Vanadera acted without or in excess of her jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, in still finding probable cause to indict respondent for the murder of Demetrio even when Reynaldo's *Sinumpaang Salaysay* was duly refuted by his sister Lydia's *Kusang Loob na Salaysay*.¹⁹

¹⁴ Id. at 294.

¹⁵ Id. at 295-296.

¹⁶ Id. at 298.

¹⁷ Id. at 3-47.

¹⁸ Id. at 8.

¹⁹ Id. at 135-136; a copy of the *Kusang Loob na Salaysay* executed on March 7, 2008 by Lydia M. Leyva-Alcaide was attached to respondent's Petition for *Certiorari* before the CA marked as Annex T.

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Petitioner, in his Comment,²⁰ prayed for the outright dismissal of respondent's Petition due to the latter's failure to file a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, when the filing of such a motion was a condition precedent for a petition for *certiorari* under Rule 65 of the Revised Rules of Court. Petitioner likewise pointed out that if respondent's motion for reconsideration was denied, respondent still had the remedy of an appeal to the Office of the President (OP). Alternatively, petitioner insisted that Acting DOJ Secretary De Vanadera did not commit grave abuse of discretion in finding probable cause to charge respondent, along with Primo, Lorenzo, and Sandy, for the murder of Demetrio. Petitioner posited that Lydia's *Kusang Loob na Salaysay* deserved no probative value since it was never presented during the preliminary investigation, as it was executed only after the preliminary investigation had been submitted for resolution.

On June 7, 2011, the Court of Appeals rendered its Decision. On procedural issues, the appellate court adjudged that the filing of a motion for reconsideration may be dispensed with in this case because "there [was] an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the [respondent]" and "public interest [was] involved."²¹

The Court of Appeals likewise ruled in respondent's favor on the substantive issues, finding grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Acting DOJ Secretary De Vanadera in her issuance of the Resolution dated September 30, 2009 considering that there was not enough evidence to establish that respondent conspired with Primo, Lorenzo, and Sandy to kill Demetrio. The appellate court opined that:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. When there is conspiracy, the act of one is the act of all (*Rosie Quidet vs. People of the Philippines*, G.R. No. 170289, April 8, 2010.)

It should be remembered nonetheless that **conspiracy is not presumed**. Like the physical acts constituting the crime itself, the **elements of conspiracy must be proven beyond reasonable doubt**. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, **the evidence therefor must reasonably be strong enough to show a community of criminal design**. (*Hermenegildo M. Magcusi v. The Hon. Sandiganbayan*, G.R. No. L-101545 January 3, 1995.)

In order to hold an accused liable by reason of conspiracy, **he must be shown to have performed an overt act** in pursuance or in furtherance

²⁰ Id. at 145-192.

²¹ *Rollo*, pp. 34-35.

of conspiracy. (*People of the Philippines v. Jessie Ballesta*, G.R. No. 181632 September 25, 2008.) The *raison detre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that **so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** (*Felix Rait v. People of the Philippines*, G.R. No. 180425 July 31, 2008.)

[Respondent] Morales has been thrown into a conspiracy net with Primo Lopez and Lorenzo Pamplona for no evident reason **except that he happened to be in the scene of the crime.** The [petitioner] ought to be reminded that **mere presence at the scene of the incident, knowledge of the plan and acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.** (*People of the Philippines v. Jessie Ballesta, supra.*) Also, We are not in agreement with the September 30, 2009 ruling of the DOJ that the theory of conspiracy “was further reinforced by the action of [respondent] Morales and [Sandy] in fleeing from the crime scene together with x x x Primo Lopez, x x x, and Lorenzo Pamplona, x x x, at the same time and the same direction.” In determining whether conspiracy exists, **it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose.** It cannot be used as basis. (*Rosie Quidet v. People of the Philippines, supra.*)

Looking at the facts on record, it is very patent that criminal intent cannot be inferred from the actuations of [respondent] Morales on the day that Atty. Demetrio Hilbero was assailed. Otherwise, a person may be indicted for a crime even when he is doing merely the most innocent acts. This is a dangerous doctrine. It is, consequently, clear that a grave abuse of discretion was committed by the then Acting Secretary of Justice in issuing the challenged Resolution of September 30, 2009.²²

The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, premises considered, the petition is partly **GRANTED**. The Resolution relative to I.S. No. 1428-07 issued by the Department of Justice on September 30, 2009 is hereby **MODIFIED**. The order directing the filing of a necessary information for murder against Florencio Morales, Jr. or to amend an existing information to include him as co-accused is **REVERSED** and **SET ASIDE**. Let Florencio Morales, Jr. be **DROPPED** by the Regional Trial Court of Calamba City, Branch 37, as a party in Criminal Case No. 15782-08-C.²³

Petitioner filed a Motion for Reconsideration²⁴ of the foregoing judgment of the Court of Appeals.

²² Id. at 39-42.

²³ Id. at 42-43.

²⁴ CA rollo, pp. 316-338.

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Sandy also filed before the Court of Appeals a Motion (For Leave of Court to Intervene),²⁵ praying that he be allowed to intervene in CA-G.R. SP No. 111191 and that his attached pleading-in-intervention be admitted. In his Intervention, Sandy claimed that the evidence presented against respondent, which the Court of Appeals deemed inadequate to support a finding of probable cause to charge respondent for murder, was the very same evidence against him, so he asked of the appellate court to likewise apply to him its Decision dated June 7, 2011, in so far as favorable to him, by ordering the RTC to drop Sandy as an accused in Criminal Case No. 15782-2008-C.

In a Resolution dated September 14, 2011,²⁶ the Court of Appeals denied for lack of merit petitioner's Motion for Reconsideration of its Decision dated June 7, 2011 and Sandy's Motion (For Leave of Court to Intervene).

Respondent, in the meantime, filed with the Court of Appeals a Motion to Furnish the Regional Trial Court with Copy of the Decision and Resolution.²⁷ On October 7, 2011, the appellate court sent a Notice of Judgment dated June 7, 2011 and Notice of Resolution dated September 14, 2011 to the RTC of Calamba City, Branches 35 and 37.²⁸

On November 24, 2011, respondent filed a Manifestation²⁹ before the Court of Appeals relaying that the RTC, acting upon respondent's motion and over the objection of the prosecution, issued a Resolution³⁰ dated October 17, 2011 in Criminal Case No. 15782-2008-C which already excluded respondent from the charge for the murder of Demetrio. The RTC, declaring that the findings and conclusion of the Court of Appeals in its Decision dated June 7, 2011 in CA-G.R. SP No. 111191 was binding upon it, accordingly resolved as follows:

WHEREFORE, premises considered, the Motion to Resolve "*Manifestation with Omnibus Motion – to Drop Florencio Morales, Jr. as accused in Criminal Case No. 15782-08-C dated June 16, 2011*" is hereby GRANTED. Let the name of accused Florencio Morales, Jr. be dropped from the herein case, the warrant of arrest dated 2 December 2009, and from the hold departure or watch list order of the Department of Justice and/or Bureau of Immigration.

In the same Manifestation before the Court of Appeals, respondent moved that the CCPO and/or Assistant City Prosecutor Edizer J. Resurrecion be ordered to explain or show cause why they should not be cited in contempt for defying the Decision dated June 7, 2011 of the appellate court when they opposed his exclusion from Criminal Case No. 15782-2008-C.

²⁵ Id. at 361-368.

²⁶ *Rollo*, pp. 45-47.

²⁷ CA *rollo*, pp. 427-430.

²⁸ Id. at 431-432.

²⁹ Id. at 441-444.

³⁰ Id. at 445-448.

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The Court of Appeals, in its Resolution³¹ dated January 19, 2012, simply noted respondent's aforementioned Manifestation since its Decision dated June 7, 2011 and Resolution dated September 14, 2011 were already the subject of a Petition for Review filed before this Court.

The Present Petition

Petitioner raises the following issues and errors for review of the Court:

ONE: RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN GIVING DUE COURSE TO RESPONDENT FLORENCIO MORALES JR.'S PETITION DESPITE THE VERY GLARING AND SERIOUS PROCEDURAL DEFECTS IN SAID RESPONDENT'S PETITION, NAMELY:

- (1) SAID RESPONDENT FAILED TO IMPEAD THE OFFICE OF SOLICITOR GENERAL AS COUNSEL FOR THE DEPARTMENT OF JUSTICE (DOJ);
- (2) SAID RESPONDENT FAILED TO FILE A MOTION FOR RECONSIDERATION BEFORE THE DEPARTMENT OF JUSTICE.³²

TWO: THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT PETITIONER (sic) DOJ SECRETARY GRAVELY ABUSED ITS DISCRETION IN FINDING PROBABLE CAUSE FOR THE CRIME OF MURDER AGAINST RESPONDENT FLORENCIO MORALES, JR.³³

THREE: THE RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN DROPPING THE NAME OF RESPONDENT FLORENCIO MORALES, JR. FROM THE INFORMATION, GIVEN THAT SAID RESPONDENT COURT OF APPEALS NEVER TOUCHED, LET ALONE EVER DISPUTED, THE FINDINGS OF PROBABLE CAUSE RENDERED BY THE REGIONAL TRIAL COURT.³⁴

FOURTH: RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN GRANTING AFFIRMATIVE RELIEF TO RESPONDENT-ACCUSED FLORENCIO MORALES, JR. WHO WAS (AND UNTIL NOW) A FUGITIVE FROM JUSTICE, AND AS SUCH, HAS ABSOLUTELY NO PERSONALITY NOR ANY RIGHT TO ASK FOR ANY AFFIRMATIVE RELIEF FROM RESPONDENT COURT OF APPEALS.³⁵

³¹ Id. at 470.

³² *Rollo*, pp. 12-13.

³³ Id. at 16.

³⁴ Id. at 20.

³⁵ Id. at 23.

Respondent, in his Comment filed on March 23, 2012,³⁶ countered the petition with these arguments:

I.

THE COURT OF APPEALS, THE DEPARTMENT OF JUSTICE THRU JUSTICE SECRETARY RAUL M. GONZALEZ AND THE PANEL OF PROSECUTORS CORRECTLY RULED AND DID NOT COMMIT GRAVE ABUSE OF DISCRETION OR ACTED IN EXCESS OR WANT OF JURISDICTION IN ORDERING THE DISMISSAL OF THE CASE FOR WANT OF EVIDENCE AGAINST THE RESPONDENT FLORENCIO MORALES, JR.

II.

THE PETITIONER AND HIS FABRICATED AND DISCREDITED WITNESS WERE NOT ABLE TO ESTABLISH ANY IOTA OR EVIDENCE TO SHOW AND PROVE THAT FLORENCIO MORALES, JR. IS A CO-CONSPIRATOR IN THE SHOOTING OF THE VICTIM. THE MERE PRESENCE OF THE RESPONDENT FLORENCIO MORALES, JR. ASSUMING THAT TO BE TRUE DOES NOT MAKE HIM A CO-CONSPIRATOR.³⁷

III.

THE DECISION OF THE HONORABLE COURT OF APPEALS IN THE CASE OF "LUISITO Q. GONZALES, ET AL. VS. ACTING SECRETARY OF JUSTICE AGNES VST DE VANADERA, ET AL.," WHICH DECISION OF THE COURT OF APPEALS IS IN ALL FOURS WITH THE FACTUAL SETTINGS IN THE CASE AT BAR SHOULD BE APPLIED IN THE CASE AT BAR.³⁸

IV.

THE ATTACHMENTS SUBMITTED BY THE PETITIONER HILBERO IN HIS PLEADINGS, SPECIALLY BEFORE THE DEPARTMENT OF JUSTICE EVEN SHOWS THAT THE ALLEGED EYE WITNESS REYNALDO LEYVA IS FABRICATING AND LYING WHEN HE CLAIMED THAT HE WAS ABLE TO IDENTIFY THE GUNMAN.³⁹

V.

THE ELEMENTS OF THE CRIME OF MURDER WAS NEVER ESTABLISHED EVEN ON PRELIMINARY INVESTIGATION.⁴⁰

VI.

THE ACTING SECRETARY DE VANADERA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR WANT OF

³⁶ Id. at 68-164.

³⁷ Id. at 83.

³⁸ Id. at 93.

³⁹ Id. at 98.

⁴⁰ Id. at 101.

JURISDICTION IN CHARGING THE FOUR ACCUSED, SPECIALLY THE PETITIONER HEREIN ABSENT THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME, TREACHERY AND ABUSE OF SUPERIOR STRENGTH WHICH ARE NOT PRESENT IN THE CASE AT BAR AS PRESENTED BY THE LONE FABRICATED EYEWITNESS.⁴¹

VII.

THE PETITIONER AND HIS COUNSEL ARE GUILTY OF "FORUM SHOPPING" FOR WHICH THE PRESENT PETITION AND THE PETITION FILED WITH THE COURT OF APPEALS MUST BOTH BE DISMISSED.⁴²

VIII.

THE SOLICITOR GENERAL IS NOT A PARTY TO BE IMPLEADED AS A PARTY IN THE CASE AT BAR.

IX.

THE RESPONDENT COMPLIED WITH THE PROCEDURAL RULES AND IS NOT A FUGITIVE FROM JUSTICE.⁴³

X.

THE REGIONAL TRIAL COURT FINDING OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST WAS BASED ON THE ERRONEOUS FINDINGS OF THEN ACTING SECRETARY AGNES VST DEVANADERA, THUS, CLEARLY THERE WAS NO JUDICIAL FINDINGS OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST WHICH WAS ACTUALLY SET ASIDE BY THE COURT A QUO IN ITS SUBSEQUENT ORDER.⁴⁴

The Court, at the outset, finds no merit in petitioner's assertion that respondent's failure to implead the Office of the Solicitor General (OSG) as a public respondent in his Petition for *Certiorari* in CA-G.R. SP No. 111191 before the Court of Appeals and the lack of participation of the OSG in the said proceedings as counsel for the DOJ warrant the outright dismissal of CA-G.R. SP No. 111191.

As petitioner himself pointed out, the OSG merely represents the government, its agencies and instrumentalities, and its officials and agents, and generally acts as the government's counsel in any litigation, proceeding, investigation, or matter requiring the services of a lawyer.⁴⁵ The OSG is not

⁴¹ Id. at 102-103.

⁴² Id. at 105.

⁴³ Id. at 106.

⁴⁴ Id. at 109.

⁴⁵ Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 which states:

Sec. 35. *Powers and Functions.* – The Office of the Solicitor General shall **represent** the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also **represent** government-owned or controlled corporations. **The Office of the Solicitor General shall constitute the law**



the actual party in any of the cases it handles in representation of the government. Therefore, respondent need not implead the OSG as a public respondent in CA-G.R. SP No. 111191.

Section 5, Rule 65 of the Revised Rules of Court further provides:

SECTION 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and **it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings**, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein. (Emphases supplied.)

Irrefragably, the duty to appear for and defend Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 before the Court of Appeals in CA-G.R. SP No. 111191 lay with petitioner, the private respondent in said case, and his counsel; and not upon the DOJ, the public respondent, and the OSG, as counsel of the DOJ. The DOJ, whether *per se* or by counsel, was a nominal party and did not have to actively participate in CA-G.R. SP No. 111191, unless specifically directed by the Court of Appeals. In a Resolution dated March 18, 2011, the Court of Appeals simply noted the Manifestation⁴⁶ of the OSG that it was not filing a memorandum in CA-G.R. SP No. 111191 on behalf of the DOJ since it had no participation therein.

Nonetheless, the Court agrees with petitioner that the Court of Appeals should have dismissed respondent's Petition for *Certiorari* in CA-G.R. SP No. 111191 for being the wrong remedy. The proper remedies respondent should have availed himself to assail Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was to file a motion for reconsideration of said Resolution with the DOJ and, in case such motion is denied, then to file an appeal before the OP.

office of the Government and, as such, shall discharge duties requiring the services of lawyers. x x x. (Emphases supplied.)

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CA rollo, pp. 275-279.

A petition for *certiorari* under Rule 65 of the Revised Rules of Court is a special civil action that may be resorted to only in the absence of appeal or any plain, speedy, and adequate remedy in the ordinary course of law.⁴⁷ It is adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction. An extraordinary remedy, a petition for *certiorari* may be filed only if appeal is not available. If appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion.⁴⁸

Memorandum Circular (MC) No. 58,⁴⁹ issued by the OP on June 30, 1993, clearly identifies the instances when appeal from or a petition for review of the decisions, orders, or resolutions of the Secretary of Justice on preliminary investigations of criminal cases may be filed before the OP:

In the interest of the speedy administration of justice, the guidelines enunciated in Memorandum Circular No. 1266 (4 November 1983) on the review by the Office of the President of resolutions/orders/decisions issued by the Secretary of Justice concerning preliminary investigations of criminal cases are reiterated and clarified.

No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, **except those involving offenses punishable by *reclusion perpetua* to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/order/resolution**, in which case the President may order the Secretary of Justice to reopen/review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such notice. (Emphasis supplied.)

In Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009, she found probable cause that respondent was criminally liable, together with Primo, Lorenzo, and Sandy, for the murder of Demetrio. Murder is a crime punishable by *reclusion perpetua* to death.⁵⁰ Moreover, Lydia's *Kusang Loob na Salaysay* was not presented during the preliminary investigation nor the appeal proceedings before DOJ Secretary Gonzalez and, therefore, could not have been considered by the ORSP-Laguna in its Resolution dated May 6, 2008 nor by DOJ Secretary Gonzalez in his

⁴⁷ *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 512 (2013).

⁴⁸ *Philippine Electric Corporation v. Court of Appeals*, G.R. No. 168612, December 10, 2014, 744 SCRA 361, 389.

⁴⁹ On October 11, 2011, the OP issued Administrative Order (AO) No. 22, Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines. Section 18 of AO No. 22, series of 2011, reads:

Sec. 18. *Limitation on Appeals*. – Appeals from decisions/resolutions/orders of the Department of Justice shall continue to be limited to those involving offenses punishable by *reclusion perpetua* to death in accordance with MC No. 58 (s. 1993).

⁵⁰ Revised Penal Code, Article 248.

Resolution dated March 18, 2009. Respondent mentioned for the first time and attached Lydia's *Kusang Loob na Salaysay* to his Comment and Opposition to petitioner's Motion for Reconsideration of DOJ Secretary Gonzalez's Resolution dated March 18, 2009. Even then, Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was silent as to Lydia's *Kusang Loob na Salaysay*. A cursory reading of respondent's Petition for *Certiorari* in CA-G.R. SP No. 111191 reveals that respondent fundamentally relied on Lydia's *Kusang Loob na Salaysay* to refute eyewitness Reynaldo's *Sinumpaang Salaysay*; and such was a new and material issue, not previously ruled upon by the DOJ, which should have been raised in an appeal before the OP rather than a Petition for *Certiorari* before the Court of Appeals.

Based on MC No. 58, Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 is appealable administratively to the Office of the President since the crime of murder, with which respondent is charged, is punishable by *reclusion perpetua* to death. From the Office of the President, the aggrieved party may file an appeal with the Court of Appeals pursuant to Rule 43 of the Revised Rules of Court.⁵¹

The Court further highlights the fact that respondent did not file a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 prior to filing his Petition for *Certiorari* in CA-G.R. SP No. 111191 before the Court of Appeals, which was likewise fatal to the said Petition. Again, the unquestioned rule in this jurisdiction is that *certiorari* will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law against the acts of the adverse party. In the present case, the plain and adequate remedy of a motion for reconsideration of Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was available to respondent under Section 13 of DOJ Department Circular No. 70, the National Prosecution Service Rule on Appeal, dated July 3, 2000.⁵² The filing of a motion for reconsideration is intended to afford public respondent DOJ an opportunity to correct any actual or fancied error attributed to it by way of a re-examination of the legal and factual aspects of the case. Respondent's failure to file a motion for reconsideration is tantamount to a deprivation of the right and opportunity of the public respondent DOJ to cleanse itself of an error unwittingly committed or to vindicate itself of an act unfairly imputed.⁵³

While there are well-recognized exceptions to the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for

⁵¹ *De Ocampo v. Secretary of Justice*, 515 Phil. 702, 710 (2006).

⁵² Sec. 13. *Motion for Reconsideration*. – The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

⁵³ *Pure Foods Corp. v. National Labor Relations Commission*, 253 Phil. 411, 420-421 (1989).

certiorari,⁵⁴ none applies to respondent's case. Contrary to the findings of the Court of Appeals, respondent's claims that Acting DOJ Secretary De Vanadera's Resolution dated September 30, 2009 was a "patent nullity rendered in excess of or want of jurisdiction" and that there was "an extreme urgency of resolving the issues raised as [respondent] will surely be deprived of due process and liberty since an Information will be railroad and the warrant of arrest issued without properly determining probable cause,"⁵⁵ were unavailing.

Respondent failed to establish that Acting DOJ Secretary De Vanadera committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in finding probable cause to charge him for the murder of Demetrio. In *Aguilar v. Department of Justice*,⁵⁶ the Court laid down the guiding principles in determining whether the public prosecutor committed grave abuse of discretion in the exercise of his/her function:

A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. As aptly edified in the recent case of *Alberto v. CA*:

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause

⁵⁴ The recognized exceptions to the rules are as follows: (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. (*Republic of the Philippines v. Bayao*, 710 Phil. 279, 287-288 (2013), citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 136-137 (2010).

⁵⁵ *Rollo*, pp. 107-108.

⁵⁶ 717 Phil. 789, 798-800 (2013).

for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.” x x x.

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor’s resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean “actual and positive cause” nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. As pronounced in *Reyes v. Pearlbank Securities, Inc.*:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense. (Emphases supplied.)


Acting DOJ Secretary De Vanadera, in her Resolution dated September 30, 2009, found probable cause to charge respondent for the murder of Demetrio based on eyewitness Reynaldo’s credible narration of

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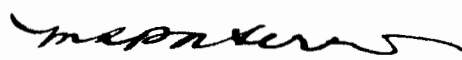
the circumstances surrounding the shooting of Demetrio and his positive identification of the culprits. Aside from respondent's general and sweeping allegations, there was no basis for concluding that Secretary De Vanadera issued her Resolution dated September 30, 2009 capriciously, whimsically, arbitrarily, or despotically, by reason of passion and hostility, as to constitute abuse of discretion; and that such abuse of discretion was so patent and gross that it was tantamount to lack or excess of jurisdiction. Respondent had already discussed and argued extensively his defenses to the charge of murder, which, as Acting DOJ Secretary De Vanadera correctly ruled, should be properly threshed out and ventilated in the course of the trial of Criminal Case No. 15782-2008-C before the RTC. Thus, the Court of Appeals should not have disturbed the findings of Acting DOJ Secretary De Vanadera in her Resolution dated September 30, 2009, absent a clear showing of grave abuse of discretion, amounting to lack or excess of jurisdiction.

WHEREFORE, in view of the foregoing, the Petition is **GRANTED**. The Decision dated June 7, 2011 of the Court of Appeals in CA-G.R. SP No. 111191 is **REVERSED** and **SET ASIDE**. The Resolution dated September 30, 2009 of the Department of Justice in I.S. No. 1428-07 directing the inclusion of Florencio A. Morales, Jr. as an accused in the Information for the murder of Atty. Demetrio L. Hilbero is **REINSTATED**.


SO ORDERED.

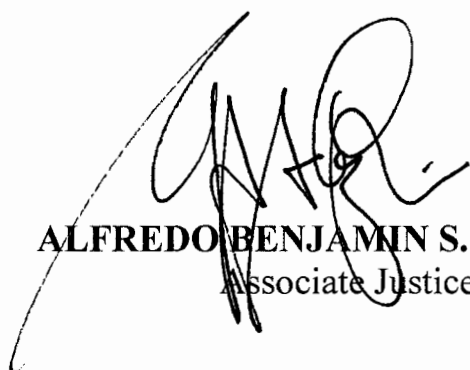

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

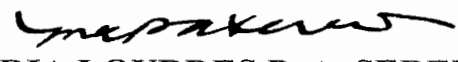

MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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.


MARIA LOURDES P. A. SERENO
Chief Justice