

LORETA SINOHIN-MOISES, PETITIONER, VS. DEPARTMENT OF JUSTICE AND ELIZABETH MOISES-GUTIERREZ, RESPONDENTS.

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court is a Petition[1] for Certiorari (with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction) dated 26 June 2014 under Rule 65 of the Rules of Court, assailing the Resolutions dated 23 June 2010[2] and 30 May 2014[3] of the Department of Justice in the case entitled "Elizabeth Moises Gutierrez v. Loreta Sinohin-Moises and Lorena Sinohin-Bellena" in I.S. No. 07-K-3575, which reversed the Resolution dated 04 August 2008 and directed the Provincial Prosecutor of the Province of Nueva Ecija to cause the filing of the corresponding Information for parricide against petitioner, and denied her Urgent Motion for Reconsideration, respectively.

Per JRD verification,[4] no comment was filed by private respondent as per CMIS entry. Thus, the fifth paragraph of the Resolution[5] dated 22 August 2014 is reiterated and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

A Memorandum for Preliminary Investigation[6] for parricide was filed on 06 November 2007 before the Office of the Provincial Prosecutor of Nueva Ecija, docketed as I.S. No. 07-K-3575.

In her Sinumpaang Salaysay[7] dated 06 November 2007, complainant Elizabeth Moises-Gutierrez accused her sister-in-law, respondent Loreta Sinohin-Moises ("Loreta," for brevity) and the latter's sister Lorena Sinohin-Bellena ("Lorena," for brevity), as the persons responsible for the death of Rolando Moises ("Rolando," for brevity). She alleged, inter alia, that: respondents Loreta and Lorena killed her brother Rolando on 16 October 2007, at around 7:30 am, inside their house at District 7, Cuyapo, Nueva Ecija; Rolando was able to tell Rebeck Moises ("Rebeck," for brevity) and Romulo Rayopa ("Rayopa," for brevity) when he was inside the tricycle on the way to the hospital that Loreta shot him; Lorena destroyed the evidence of the crime to cover up the crime committed by her sister; and Rolando is married to Loreta as evinced by their Certificate of Marriage.

Respondent Loreta filed her Counter-Affidavit[8] dated 10 December 2007, denying the accusation that she killed her husband Rolando. She alleged, inter alia, that: on 16 October 2007, Rolando was about to leave their house to buy cavans of palay; her father-in-law Faustino Moises ("Faustino," for brevity) was also at their house; Rolando had Php250,000.00 in his pocket; the police made no report what happened to the money; she noticed that Rolando brought his gun and when she asked why he brought the same, he replied that it was needed; she was inside the comfort room when she heard a gunshot and did not personally see what happened; after she heard the gunshot, she rushed out and saw him lying flat on the floor with blood on his chest and on the floor; she was in panic and screamed while calling his name "Galman" (my husband); his pulse stopped and was completely dead; she fainted and after two days, she found herself in a clinic, owned by Dr. Flor Paguio-Esteban ("Dr. Esteban," for brevity), where Rolando was rushed and declared dead; Rebeck was at their house minutes after the incident and was seen by Priscilla Santos ("Santos," for brevity) fixing at his waist a .357 revolver and was the same person who gave the wallet (without the Php250,000.00 cash) that he took from Rolando, to Lorena; after three days of

confinement, she went to their house to view Rolando's cadaver; her sister-in-law Evelyn Moises Lazo advised her to hide for quite sometime and was told to stay at the Santos' house; after a couple of days, her in-laws took their service Isuzu Highlander and used the same for about one month despite her repeated pleas to give it back; had she not sought police assistance, the said vehicle would not have been returned; complainant admitted that she has no personal knowledge as she was not around at the time Rolando was shot and therefore her statements are hearsay; the biases and lapses in the investigation were easily discernible as the Police Station Journal and Memorandum Report dated 21 October 2007 of the Cuyapo Police Station stated that what happened was an accident; the policemen did not take into account the missing Php250,000.00 in Rolando's possession that could have backed up the theory of robbery, which the police investigator should have pursued but did not; about four weeks were allowed by the police investigators to lapse yet their theory (dying declaration) was anchored on the statement of Rebeck and Rayopa then available at the day of the incident for which she could have been arrested; the police investigators suppressed or neglected some material statements of Faustino, her niece Sheilla Marie Moises-Diaz, her two children, and Lorena, who were all present on or about the time of the incident; with the response of "itang" allegedly spoken by Rolando, which could be interpreted as calling his wife, the police investigators proceeded to make provocative questioning, putting into the mouth the words "na siyang bumaril sa kanya" of Rebeck and Rayopa; Rayopa even told Manuel Santos, S/Insp. Jojo Ocampo and Dolan Ramos that Rolando was already dead while on the way to the hospital; the dying declaration is contradicted by the medical reports presented by the police investigators, stating that Rolando was dead upon arrival; they should have investigated Faustino who was present at their house during the said incident; they should have expounded on the possibility of the involvement of Rebeck, who was there before and after the happening of the event and who took Rolando's wallet; the chemist report/certification are contradictory as it certified the presence of powder nitrate on Rolando's maong shirt as positive, but yielded negative findings of the powder nitrate on his hands or arms; the police investigators omitted to secure any further certification from the physician regarding the probable time of death; the police memorandum erroneously interpreted the autopsy of the medico legal to have reported two entries of gunshot wounds; records disclose that one Mr. Santos heard only one gunshot, which jibed with her statement; only one slug was recovered; all of which proved that only one gunshot was fired and the nearest possibility is that of an accident; police investigators omitted to submit a medico legal report as to what kind of gun was used, based on the recovered .357 revolver and slug from Rolando's body; this is significant because of the contradictory findings of the police that the gun used was a 9mm (police journal) and .357 caliber (police memorandum); the police investigators even omitted to secure a certification about the possible distance of the would-be assassin to Rolando; the possibility of an accidental shot is not far-fetched as the same accidental shot was reported in the police memorandum dated 21 October 2007, police journal and police blotter; Nolito Paringit, who Rolando had a deal with for buying palay, was not investigated; and the police investigators failed to subject her to a paraffin test.

Respondent Lorena filed her Counter-Affidavit[9] dated 10 December 2007, stating that she was not an accessory and that her sister did not kill Rolando. She alleged, inter alia, that: on 16 October 200[7], when she returned home from the market, she saw Loreta hysterically asking for saklolo and uttering Rolando's name, Galman; she saw Rolando lying dead on the floor, no longer breathing, eyes closed and mouth sealed; she ran outside for help where Rayopa and his wife Marta arrived and later Rebeck; they brought the dead body of Rolando to a tricycle and to Paguio Clinic; about twenty minutes from the time Rebeck and Rayopa brought Rolando to the clinic, Rebeck returned to Loreta's house and handed her Rolando's wallet containing Php1,200.00 and IDs; thereafter, three policemen arrived and asked her whether the spouses had quarreled and she said no; they asked her why she cleaned the blood on the floor and she said the blood was still there and nobody ordered her [to clean it]; the three policemen returned and made the same investigation in the afternoon and the following day; she was surprised that she and Loreta were being accused of killing Rolando; and there is no way she could be charged as an

[accessory] for the simple reason that Loreta did not kill Rolando.

Complainant filed her Reply[10] on 17 December 2007, to which respondents Loreta and Lorena filed their Rejoinder-Affidavit[11] dated 11 January 2008.

A Resolution[12] dated 25 February 2008 was issued by the Investigating Prosecutor Edison V. Rafanan ("Rafanan," for brevity) of the Office of the Provincial Prosecutor of Nueva Ecija, Cabanatuan City, finding probable cause to indict respondent Loreta for parricide, recommending the approval of the Information, and recommending the dismissal of the charge against respondent Lorena for lack of probable cause.[13]

However, in the Review Resolution[14] dated 23 April 2008 of 1st Asst. Provincial Prosecutor/Officer-in-Charge Floro F. Florendo, he dismissed the case against respondents Loreta and Lorena for insufficiency of evidence.[15]

Complainant filed a Petition for Review[16] dated 12 May 2008 before the Department of Justice. A Resolution[17] dated 04 August 2008 was issued by then Secretary Raul M. Gonzalez, dismissing the petition for review and finding the Review Resolution in accord with the evidence adduced and relevant jurisprudence.

Complainant filed a Motion for Reconsideration[18] dated 21 August 2008.

On 23 June 2010, then Acting Secretary Alberto C. Agra issued the first assailed Resolution[19] which partially granted the Motion for Reconsideration and directed the filing of the corresponding Information for parricide against respondent Loreta, the dispositive portion of which reads:

"WHEREFORE, the instant Motion for Reconsideration is hereby PARTIALLY GRANTED. The Provincial Prosecutor of the Province of Nueva Ecija is hereby directed to cause the filing of the corresponding Information for Parricide against Loreta Sinohin-Moises only and to report the action taken within ten (10) days from receipt hereof.

SO ORDERED."[20]

Respondent Loreta filed an Urgent Motion for Reconsideration[21] dated 09 July 2010, which was denied in the second assailed Resolution[22] dated 30 May 2014 issued by Secretary Leila M. De Lima.

Hence, this Petition.

RULING

Petitioner raises the following grounds for allowance of her Petition, viz:

"1. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT GRANTED PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION DESPITE HAVING BEEN FILED (PRESUMABLY OUT OF TIME OR BEYOND THE 10-DAY REGLEMENTARY PERIOD), DUE TO PRIVATE RESPONDENT'S CLEVER OMISSION (sic) IN NOT STATING THE MATERIAL DATE IT (sic) RECEIVED THE DOJ'S FIRST ORDER OF DISMISSAL WHICH OMISSION IS JURISDICTIONAL. RATHER THAN SLAPPED (sic) APPROPRIATE SANCTION ON THE PRIVATE RESPONDENT'S DEEPENING (sic) SILENCE IN NOT RESPONDING TO PETITIONER'S CHALLENGE TO STATE THE MATERIAL DATE OF RECEIPT OF THE DOJ (sic) FIRST ORDER OF DISMISSAL, OR COMPELL (sic) SAID RESPONDENT TO DISCLOSE THE SAME OR REFERRED (sic) TO ITS RECORD, THE DOJ CASUALLY DOWN-PLAYED (sic) AND CONVENIENTLY NEGATED SAID JURISDICTIONAL DEFECT IN THE RESPONDENT'S MOTION FOR RECONSIDERATION AS ALLEGEDLY ONLY SPECULATIVE(,) IGNORING SETTLED RULE ON THE MATTER. BY THE OMISSION ALONE OF THE MATERIAL DATE OF RECEIPT THE PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION, IT SHOULD HAVE BEEN SUMMARILY DENIED. THIS IS CASUS OMISSUS.

2. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT VIOLATED PETITIONER'S

RIGHT TO SPEEDY DISPOSITION OF ITS (sic) CASE BY ITS INORDINATE OR UNDUE DELAY OF ABOUT FOUR (4) YEARS BEFORE IT RENDERED ITS ASSAILED ORDER DATED MAY 30, 2014 WHICH DENIED PETITIONER'S MOTION FOR RECONSIDERATION WARRANTING (sic) THIS HONORABLE COURT'S EXERCISE OF THE WRIT OF CERTIORARI TO STRIKE DOWN SAID ORDER WITH NULLITY THEREBY UPHOLDS (sic) THE PRIOR ORDER OF DISMISSAL BY THE DOJ AND THE REVIEW RESOLUTION OF THE PROVINCIAL PROSECUTOR – AS A PROTECTIVE MEASURE OF PETITIONER'S RIGHT TO SPEEDY DISPOSITION.

3. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FOUND PROBABLE CAUSE UPON MERE ASSUMPTIONS AND SUPPOSITIONS MISTAKENLY APPLYING THE RULE ON CIRCUMSTANTIAL EVIDENCE.

4. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION IGNORING (sic) SETTLED RULE THAT EVEN IN PRELIMINARY INVESTIGATION, ALL THE ELEMENTS OF THE OFFENSE OF PARRICIDE SHOULD HAVE BEEN ESTABLISHED AT LEAST ON THE QUANTUM OF EVIDENCE OF PROBABLE CAUSE."^[23]

Petitioner contends, inter alia, that: under the DOJ rules, the 10-day reglementary period from receipt of the order or judgment within which to file a motion for reconsideration is mandatory, it being jurisdictional; rather than compel private respondent to disclose the material date when she received the Resolution which dismissed the appeal, the DOJ ratiocinated that the challenge on the material date was merely speculative; her motion for reconsideration was filed as early as 09 July 2010; it was after about four years that the DOJ resolved the same; the DOJ's findings are merely speculations and suppositions, ignoring that in preliminary investigation all the elements of the crime must be established and that its resolution should not be based on suppositions; the crime of parricide was not established; there are no specific and probable findings that she shot her husband; the slug found inside inside the victim's body was not determined whether it came from the .357 revolver; she was hysterical because of her loving husband's death and had to be sedated; the police could have simply conducted a paraffin test on her; there was no indication in the report that she refused any request for a paraffin test; when she regained consciousness, she proceeded to the police and was making follow-ups with the progress of the investigation; the investigators espoused two views, accident and robbery hold-up; the accident theory, which could have happened when the gun dropped on the floor, accidentally burst and hitting first the victim's hands, then penetrated the wall and ricocheted back at the victim; there was only one gunshot heard; assuming the robbery theory is correct, it is not believable that she would rob her husband; aside from "itang," Rolando made no other statements concerning the circumstances of his death; mere call of "itang" is not the utterance referred to in a dying declaration; this could hardly be interpreted as pointing to her as the murderer; it could be Rolando's last word to call his wife's name; there was no finding concerning the metal chip found inside Rolando's body; the findings that Rolando sustained a bullet wound in the left scapular area and that she was inside the comfort room do not lead to the identity of the perpetrator; the interval of time during which she was inside the comfort room, her children and niece left for school, to the time others went inside the house offer enough time for anyone to enter and leave the house immediately; only one bullet was fired from the .357 caliber revolver, one slug recovered and only one gunshot was heard by the witnesses; the physician who conducted the autopsy should have been asked to clarify the number of wounds, its seriousness, and its effect, the possible distance between the victim and the assailant, and whether it is possible that the two wounds were caused by one bullet; Dr. Esteban, to whom the deceased was initially brought, should have likewise been asked; some think it was her because the evidence submitted indicate that at that time of the incident, she was the only one with Rolando; there is no evidence that she and Rolando in the past and immediately before the incident had any quarrel to move her to put her husband to death; private respondent's theory is hard to believe for why would she kill her husband inside their house and not hide the .357 revolver; her trauma associated with the incident is the one qualified as part of *res gestae* and never the word

"itang"; and right after the incident, private respondent immediately grabbed her newly bought vehicle and had she not threatened of charging her for carnapping, said vehicle would not have been returned.

Stripped of verbiage, the threshold issue in this special civil action for certiorari is whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in directing the Provincial Prosecutor of Nueva Ecija to cause the filing of an Information for parricide against petitioner, and in denying her Motion for Reconsideration.

We find in the negative. Not being entitled to the relief demanded in the Petition, petitioner's application for injunctive relief must perforce fail.

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 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. Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.[24]

Not every error in the proceedings, or every erroneous conclusion of law or fact, is grave abuse of discretion.[25] The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent

and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[26] This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained.[27]

We find no cogent reason to reverse the finding of probable cause to indict petitioner for parricide.

Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause 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. 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.[28] (I)n order to arrive at a finding of probable cause, the elements of the crime charged should be present. In determining these elements for purposes of preliminary investigation, only facts sufficient to support a prima facie case against the respondent are required, not absolute certainty. (P)robable cause implies mere probability of guilt, i.e., a finding based on more than bare suspicion but less than evidence that would justify a conviction.[29]

In the instant case, public respondent reversed its earlier pronouncement affirming the finding of the Acting Provincial Prosecutor of the Province of Nueva Ecija, found the observations of the Investigating Prosecutor Rafanan to be more in accord with law and common sense,[30] and directed the filing of the corresponding Information for parricide against petitioner.[31] Art. 246 of the Revised Penal Code, as amended, provides:

"ART. 246. Parricide. – Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death."

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused.[32]

Here, Investigating Prosecutor Rafanan conducted a preliminary investigation in I.S. No. 07-K-3575. It is conducted to protect the innocent from the embarrassment, expense and anxiety of a public trial. While xxx it is statutory rather than constitutional, it is a substantive right and a component of due process in the administrative justice. xxx It serves to accord an opportunity for the presentation of the respondent's side with regard to the accusation. Afterwards, the investigating officer shall decide whether the allegations and defenses lead to a reasonable belief that a crime has been committed, and that it was the respondent who committed it. Otherwise, the investigating officer is bound to dismiss the complaint.[33]

Investigating Prosecutor Rafanan found probable cause to indict petitioner for parricide,[34] which was sustained by public respondent in the first assailed Resolution. The prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions xxx.[35] As found by Investigating Prosecutor Rafanan, viz:

"As per autopsy report submitted, the point of entry of the bullet is at (L)supra scapular area and the point of exit is left side of the chest just below the nipple, so, ROLANDO was shot behind.

The bullet penetrated the lung and left side of the heart of ROLANDO.

From the affidavits submitted by both parties(,) the following has (sic) been established and some of them are even admitted by them:

1. That when the gunshot was heard, both SPOUSES LORETA and ROLANDO were inside their room and nobody else was inside the house.
2. That ROLANDO's father was at the terrace of the house.
3. That after ROLANDO was shot, LORENA arrived from the market.

4. That after RORENA (sic) arrived, Kagawad ROMULO RAYOPA came to the house.
5. That after Kag. RAYOPA, REBECK MOISES arrived.
6. (T)hat Kag. RAYOPA and REBECK brought ROLANDO to the said clinic and was declared dead on arrival.
7. That there was a .357 revolver found inside the room after the incident xxx.
8. That CHITO EDRALIN(,) who reported the shooting incident to the (p)olice(,) did not see the incident.
9. That LORENA cleaned the blood on the floor after ROLANDO was brought to the hospital.
10. The (sic) LORETA was confined at the said clinic for three (3) days.
11. That REBECK is the cousin of ROLANDO.
12. That REBECK handed to LORENA the wallet of ROLANDO containing P1,200.00.
13. That nobody saw who shot ROLANDO.
14. That LORETA was not subjected to (sic) paraffin test.
15. That the fired bullet recovered from the crime scene was fired from (sic) caliber .357 revolver found by REBECK inside the room of SPOUSES ROLANDO and LORETA MOISES.
16. That the cause of death of ROLANDO was Hemorrhagic Shock Secondary (t)o Penetrating Gunshot Wound at the back(.)
17. That LORETA and ROLANDO are legally married(.)
18. That respondents are sisters.

x x x x

x x x there are more than two (2) circumstantial evidence in the case x x x Preliminary investigation is not the occasion for the full and exhaustive presentation of evidence. It is only for determination if the evidence presented may engender (sic) well-grounded belief that on (sic) offense has been committed and that the respondent is probably guilty thereof.

The circumstantial evidence, to enumerate(,) are the following:

- a. LORETA and ROLANDO were the only persons inside their room when the gunshot was heard.
- b. The killer gun was found inside their room.
- c. That ROLANDO was shot from behind.
- d. That no one went inside the house before the gunshot was heard nor any one left the premises immediately after the gunshot was heard.
- e. That when LORENA arrived in the house, only LORETA and ROLANDO were inside the house.
- f. The trajectory of the bullet that hit ROLANDO.
- g. That the fired bullet found in the crime (scene) was fired from the .357 caliber revolver found inside the room.
- h. ROLANDO fell right there at the door of (the) room where LORETA was inside.

x x x x

The robbery that LORETA wants to establish has nothing to do with the death of ROLANDO. The latter was already shot when the P250,000.00 was allegedly stolen, So, the money has nothing to do with the killing."[36]

In the Sinumpaang Salaysay[37] of Brgy. Kagawad Romulo Rayopa he stated, inter alia, that: Precy informed him that she heard a woman asking for help, coming from Loreta and Rolando's house; he immediately went to their house; he saw Rolando lying on the floor with blood on his chest; Loreta and Lorena were crying; he rushed to help and noticed Rolando trying to talk; Rebeck arrived and they brought Rolando to the Paguio-Esteban Lying Clinic where Dr. Esteban pronounced him dead; and during the tricycle ride, Rebeck asked Rolando who shot him and he answered "itang" which was Rolando's nickname for Loreta. In the Sinumpaang Salaysay[38] of Rebeck Moises, he stated, inter alia, that: on his way back, he passed by Loreta and Rolando's house; the tricycle drivers said something happened so he went inside the house where he saw Rolando with blood on his chest; Rayopa was holding Rolando's arms; Loreta was jumping and crying; he helped Rayopa carry Rolando and brought him to Paguio-Esteban Clinic; Dr. Esteban pronounced Rolando dead; when he asked Rolando who shot him, the latter answered "itang," which was Loreta's nickname. In the Affidavit[39] of Virgilio A. Moises dated November 2007, he stated, inter alia, that: Rolando was his brother who was married to Loreta; he knew that the marriage of Rolando was in trouble for the latter confided in 2001 that Loreta falsely claimed that she lost Php1,000,000.00 to a thief but in truth, she used it for a third party and from then on, they often quarreled about money and infidelity of both parties. In the Autopsy Report[40] dated 16 October 2007, prepared by Dr. Jun B. Concepcion, the cause of Rolando's death was "HEMORRAHAGIC SHOCK SECONDARY TO xxx GUNSHOT WOUND at the BACK (L)."

Further, as keenly pointed out by public respondent in the first assailed Resolution, viz:

"This Office believes that there are sufficient circumstances as can be gleaned from the records, to suggest that Rolando Moises was probably killed by respondent Loreta Sinohin-Moises, viz:

- 1) That no one went inside the house before the gunshot was heard nor anyone left the premises immediately after the gunshot was heard;
- 2) That Loreta and Rolando were the only persons inside their room when the gunshot was heard;
- 3) That the killer gun was found inside their room;
- 4) That Rolando was shot from behind;
- 5) That based on the trajectory of the bullet, the shooter must have been the same height as Rolando;
- 6) That the hands of Rolando tested negative for gunpowder residue;
- 7) That when asked who shot him, Rolando replied "Itang" (another name by which Loreta is known); and
- 8) That when Lorena arrived in the house, only Loreta and Rolando were inside the house.

These among others seem to suggest that Loreta Sinohin-Moises was probably responsible for the death of Rolando.

x x x x

Based on the foregoing therefore, there is sufficient evidence to suggest that respondent Loreta should stand for trial for the death of her husband. xxx"[41]

Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[42]

It is also important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or on the admissibility or veracity of testimonies presented. xxx (T)hese matters are

better ventilated during the trial of the case.[43] Thus, a finding of probable cause 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. Precisely there is a trial for the reception of evidence of the prosecution in support of the charge.[44]

Petitioner posits that public respondent's undue delay of about four (4) years in resolving her Motion for Reconsideration allegedly violated her right to speedy trial or speedy disposition.

We are unswayed.

Here, there is no pending criminal case and clearly no trial yet. In fact, it was only in the first assailed Resolution that public respondent directed the Provincial Prosecutor of the Province of Nueva Ecija to cause the filing of the Information for parricide against petitioner.

In any event, (i)f at all, the delay in the proceedings below is only attributable to the ordinary processes of justice.[45] (M)ere mathematical reckoning of the time spent xxx is not a sufficient basis to conclude that there was arbitrary and inordinate delay. The delay in the determination of probable cause in this case should not be cause for an unfettered abdication by the (public respondent) of its duty xxx. The protection under the right to a speedy disposition of cases should not operate to deprive the government of its inherent prerogative in prosecuting criminal cases.[46]

Considering the foregoing disquisition, We find no necessity to resolve the other matters raised by petitioner.

WHEREFORE, premises considered, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

Diamante, and Sadang, JJ., concur.

[1] Rollo, pp. 03-52

[2] Id. at 61-65

[3] Id. at 84-87

[4] Id. at 217 (dorsal side)

[5] Id. at 216

[6] Id. at 124

[7] Id. at 125-126

[8] Id. at 147-163

[9] Id. at 174-176

[10] Id. at 188-195

[11] Id. at 196-215

[12] Id. at 116-123

[13] Id. at 123

- [14] Id. at 88-92
- [15] Id. at 92
- [16] Id. at 93-100
- [17] Id. at 53-54
- [18] Id. at 55-60
- [19] Id. at 61-65
- [20] Id. at 64
- [21] Id. at 66-83
- [22] Id. at 84-87
- [23] Id. at 29-31
- [24] Barry Lanier, et al. v. People of the Philippines, G.R. No. 189176, 19 March 2014
- [25] Gerry A. Salapuddin v. The Court of Appeals, et al., G.R. No. 184681, 25 February 2013
- [26] Unilever Philippines, Inc. v. Michael Tan a.k.a. Paul D. Tan, G.R. No. 179367, 29 January 2014
- [27] Id., citing Elma v. Jacobi, G.R. No. 155996, 27 June 2012, 675 SCRA 57
- [28] Masayuki Hasegawa v. Leila F. Giron, G.R. No. 184536, 14 August 2013
- [29] Ray Shu v. Jamie Dee, et al., G.R. No. 182573, 23 April 2014
- [30] Rollo, p. 61
- [31] Id. at 64
- [32] People of the Philippines v. Roy San Gaspar, G.R. No. 180496, 02 April 2014
- [33] Saturnino C. Ocampo v. Hon. Ephrem S. Abando, etc., et al., G.R. Nos. 176830, 185587, 185636 and 190005, 11 February 2014
- [34] Rollo, p. 123
- [35] Cf. Teresita Tanghal Okabe v. Hon. Pedro De Leon Gutierrez, etc., et al., G.R. No. 150185, 27 May 2004
- [36] Rollo, pp. 119-121
- [37] Id. at 131-133
- [38] Id. at 128-130
- [39] Id. at 127
- [40] Id. at 145-146
- [41] Id. at 63
- [42] Cf. People of the Philippines v. Wilfredo Solano, Jr. y Gecita, G.R. No. 199871, 02 June 2014
- [43] Unilever Philippines, Inc. v. Michael Tan a.k.a. Paul D. Tan, *supra*

[44] Id., citing Metropolitan Bank & Trust Company v. Gonzales, G.R. No. 180165, 07 April 2009, 584 SCRA 631

[45] Cf. Vivencio Roallos y Trillanes v. People of the Philippines, G.R. No. 198389, 11 December 2013

[46] Cf. Isabelo A. Braza v. The Honorable Sandiganbayan (1[st] Division), G.R. No. 195032, 20 February 2013

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