

MAGTANGGOL B. GATDULA, PETITIONER-APPELLEE, VS. HON. LEILA M. DE LIMA, SECRETARY OF THE DEPARTMENT OF JUSTICE, DOJ FACT-FINDING PANEL RE: KIDNAPPING OF NORIYO OHARA, USEC. FRANC...

Ponente: PAREDES, J.

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PAREDES, J.:

THE CASE

THIS APPEAL UNDER RULE 41, Section 2(a) of the Rules of Court filed by Hon. Leila M. De Lima, in her official capacity as Secretary of Justice, Undersecretary Francisco F. Baraan III, as Chairman of the Fact-Finding Panel, Assistant Secretary Zabedin M. Azis, as Vice-Chairman of the Fact-Finding Panel, and Quezon City Prosecutor Donald T. Lee, as a member of the Fact-Finding Panel (collectively, the Panel or respondents-appellants, as may be used herein) seeks to annul and set aside the Decision[1] dated January 29, 2013 of the Regional Trial Court of Manila, Branch 8, in Civil Case No. 12-127186 which partially granted the verified petition for certiorari and prohibition filed by petitioner-appellee Magtanggol B. Gatdula (petitioner-appellee) declaring as null and void the investigation conducted by the Panel on December 22, 2011 and considering the evidence obtained therefrom inadmissible in any other proceeding. Also assailed is the Order[2] dated May 8, 2013 denying respondents-appellants' motion for reconsideration.

THE ANTECEDENTS

On December 3, 2011, Ramon Tulfo, in his column "On Target" published by the Philippine Daily Inquirer (PDI), wrote about the alleged kidnap-for-ransom case of Noriyo Ohara (Ohara), a Japanese national, by certain unnamed members of the National Bureau of Investigation (NBI)[3].

In the article by-lined as "NBI agents in kidnap-for-ransom case?"[4], it was alleged that Ohara, an undocumented alien who came to the Philippines in 2009 to escape from the Yakuza, the Japanese mafia, that wanted to kill her as they did her father. She did not pass through the immigration counter at the airport but was picked-up, plane-side, by an immigration employee and whisked her away to the house of her foster family in Las Piñas City. Ohara, through her foster family, gave a monthly stipend to the immigration employee. However, the stipend stopped after the immigration employee's retirement, thereby angering the retired immigration employee so much so that the said immigration employee reported Ohara to certain agents of the NBI. On October 28, 2011, Ohara, who had assumed the name Marife Marzan, after her foster family's last name, was arrested by NBI agents in Bugallon, Pangasinan and was brought to the Security Management Division (SMD) of the NBI where she was detained. The agents then told the Marzans that Ohara would be released in exchange for P100 Million, but which amount was later dropped to P15 Million. The Marzans were able to deliver a total of P6 Million, accounted for, as follows: P1 Million allegedly received by Jose Odellion Cabillan (Cabillan), Executive Officer of the Security Management Division (SMD), and a certain Chona, in the presence of SI Mario Garcia (SI Garcia), chief of the SMD, and a certain Labsky; P4 Million was delivered again to Cabillan inside SI Garcia's office; another P1 Million was handed to Cabillan and Chona. SI Garcia reportedly told the Marzans that they would have to sell the

house and BMW car owned by Ohara since, according to SI Garcia, “marami pang pogi sa taas ang dapat nating ayusin”, alluding to the big bosses at the NBI.

Due to the gravity of the accusations in the newspaper account, President Benigno S. Aquino III issued a verbal directive to Secretary De Lima to conduct an investigation[5]. Following the said directive, Secretary De Lima issued Department Order No. 1007 (DO No. 1007)[6] dated December 6, 2011 constituting a fact-finding panel to investigate the case of Noriyo Ohara, a Japanese national alleged to be the victim of extortion by agents of the NBI. Pursuant to DO No. 1007, the Panel was constituted composed of DOJ Undersecretary Baraan III as Chairman, Assistant Secretary Azis as Vice-Chairman, and Quezon City Chief Prosecutor Lee as Member, to investigate the veracity of the allegations reported by Tulfo in his PDI column; the reported involvement of certain NBI officials and agents, including officers and members of the SMD who were implicated in the extortion, namely: SI Garcia, NBI-SMD Chief, Cabillan, NBI-SMD Executive Officer, and two other persons identified merely as “Chona” and “Labsky”; and the involvement of high-ranking NBI officials, whom SI Garcia allegedly referred to as having a share in the proceeds of the extortion scheme. Finally, the panel was tasked to submit, not later than thirty (30) days from the date of issuance of DO No. 1007, a report of its findings and recommendation, including the possible filing of appropriate criminal and administrative charges against those who may be found liable thereunder.

On December 21, 2011, the Panel invited petitioner-appellee to appear before it at a hearing on December 22, 2011, to shed light on the case of Ohara[7]. Petitioner-appellee accepted the invitation and went to the hearing as a resource person[8].

After the proceedings were terminated, the Panel issued its Report[9] dated January 6, 2012 which was submitted to Secretary De Lima on January 9, 2012, and which Secretary De Lima, in turn, submitted to President Aquino on January 11, 2012[10]. The Panel recommended, among others, the filing of criminal charges[11] against the following individuals:

Kidnapping and Serious Illegal Detention against:

- Mario Garcia
- Chona Elen Esplana
- Virgelito Gutierrez, alias “Labsky”
- NBI Director Magtanggol Gatdula
- Security Volunteers who conspired and participated in the criminal operation
- Raul Dimaano
- Jose Odelon Cabillan

Grave Coercion against:

- Mario Garcia
- Chona E. Esplana

Falsification against:

- Mario Garcia
- Jose Odelon Cabillan

Robbery against:

- Mario Garcia
- Chona E. Esplana
- Virgelito A. Gutierrez, a.k.a. "Labsky"

(Underscoring supplied)

It also recommended the filing of administrative charges[12] against the following:

- Chief SI Mario Garcia for Grave Misconduct, Serious Dishonesty, Being Notoriously Undesirable, and Conduct Prejudicial to the Best Interest of the Service;
- Director Magtanggol Gatdula for Grave Misconduct, Gross Neglect of Duty, Gross Insubordination and Conduct Prejudicial to the Best Interest of the Service;
- Ex-O/SI Jose Odelon Cabillan for Grave Misconduct, Serious Dishonesty, Being Notoriously Undesirable, and Conduct Prejudicial to the Best Interest of the Service;
- Deputy Director Rickson Chiong (Deputy Director-in-Charge of Administrative Services having jurisdiction over SMD) for Inefficiency and Incompetence in the Performance of the Official Duties;
- Atty. Claro A. De Castro, Jr. (Chief, NBI-FLD) for Serious Dishonesty and Insubordination;
- Raul Dimaano (Executive Assistant III to the NBI Director) for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. (Emphasis supplied)

Sofar as petitioner-appellee was concerned, the recommendation of the Panel was based on Cabillan's testimony whereby it appears that petitioner-appellee knew of the criminal operation carried out by SI Garcia and his group, monitored the conduct of the same, and received from Cabillan, through his special assistant Raul Dimaano, part of the initial proceeds of the ransom money. Other direct and circumstantial evidence also show his knowledge and participation in the operation and its cover-up[13].

On January 19, 2012, petitioner-appellee's appointment as Director of the NBI was terminated by the President[14].

Secretary De Lima then forwarded copies of the Report to the Office of the Ombudsman[15] and the National Prosecution Service (NPS)[16], along with its supporting documents and annexes, for appropriate action in relation to the Panel's recommendation to administratively and criminally charge the individuals named in the Report, including petitioner-appellee. However, with respect to the recommendation to criminally charge petitioner-appellee, Secretary De Lima ordered that action by the NPS on the same be deferred pending the submission of the Supplemental Report of the Panel which was reconstituted pursuant to Department Order No. 047 (DO No. 047)[17] dated January 20, 2012.

Secretary De Lima issued DO No. 047 for the sole purpose of re-assessing and re-evaluating its recommendation to charge petitioner-appellee with the crime of Kidnapping and Serious Illegal Detention, particularly as to the extent and nature of his participation and criminal culpability and, further, in light of the gravity of the offenses recommended to be charged against petitioner-appellee, and in the interest of ensuring the exercise of utmost prudence and diligence in a highly sensitive matter, which has become a matter of public interest in light of the rank, status and sensitivity of the position he once held[18].

On January 26, 2012, petitioner-appellee filed a verified petition for certiorari and prohibition[19] questioning the

constitutionality of the department orders, the validity of the proceedings conducted by the Panel and the admissibility of the evidence obtained therefrom.

In Order[20] dated January 27, 2012, Hon. Marino M. Dela Cruz, Jr., Executive Judge of the RTC, issued a seventy-two (72) hour temporary restraining order enjoining respondents-appellants from implementing or further implementing the questioned department orders and from issuing any further report and recommendation to any government agency.

On January 31, 2012, the RTC granted the prayer for TRO, extending the 72-hour TRO issued by the Executive Judge, to a total period of twenty (20) days subject to the filing of a cash bond in the amount of P100,000.00[21].

Due to the issuance of a TRO on the reconstituted Panel, on February 14, 2012, Secretary De Lima issued Department Order No. 132, s. 2012[22] (DO No. 132) revoking DO No. 047 and declaring the reconstituted Panel to be functus officio.

On February 20, 2012, the court a quo granted the prayer for the issuance of a writ of preliminary injunction, thus, enjoining respondent-appellants from issuing or transmitting any report to any other government agency obtained through DO Nos. 1007 and 047. Respondents-appellants were further restrained from doing, threatening, procuring or suffering to be done acts or transactions which are detrimental or prejudicial to the interest of petitioner-appellee[23].

On January 29, 2013, the RTC rendered a Decision[24], the decretal portion of which, reads:

WHEREFORE, premises considered, the Verified Petition for Certiorari and Prohibition [With Prayer for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction] is hereby PARTLY GRANTED, to wit:

(1) The Petition, praying that D.O. Nos. 1007, s. 2011 and 047, s. 2012 be declared as null and void for being unconstitutional, is hereby DENIED.

(2) The Petition, praying that all the actions taken by the Fact-Finding Panel be declared as null and void and all the evidence obtained therefrom be considered as inadmissible in evidence is hereby GRANTED. The investigation conducted by the Fact-Finding Panel on December 22, 2011 is hereby considered as NULL AND VOID for being violative of the constitutional rights of the petitioner[-appellee] to remain silent and to have an independent and competent counsel preferably of choice, and the testimony of petitioner[-appellee] obtained from said investigation, as well as evidence obtained therefrom is hereby considered INADMISSIBLE in evidence in any other proceeding.

SO ORDERED. (Emphasis in the original)

Respondents-appellants moved[25] for partial reconsideration of the Decision declaring the proceedings of the Panel null and void and declaring all evidence obtained therefrom as inadmissible; however, the motion was denied by the court a quo in the Order[26] dated May 8, 2013.

Hence, the instant appeal.

THE ISSUE

Respondents-appellants raise the following issues[27] for our resolution:

I.

WHETHER THE ASSAILED DEPARTMENT ORDERS ARE PROPER SUBJECTS OF A PETITION FOR CERTIORARI AND PROHIBITION.

II.

WHETHER APPELLEE IS ENTITLED TO THE PROTECTION AFFORDED BY SECTION 12 AND 17, ARTICLE III OF THE 1987 CONSTITUTION.

THE COURT'S RULING

We deny the appeal.

Respondents-appellants maintain[28] that Secretary De Lima issued the challenged department orders not in the exercise of her quasi-judicial function but of her administrative function as head of the DOJ. They argue[29] that the Fact-Finding Panel merely recommended petitioner-appellee's indictment to Secretary De Lima based on the evidence it gathered. Its recommendation was just a consequence of its mandate to conduct a fact-finding investigation. It did not even determine the existence of probable cause, much less adjudicate on the merits of the charges against petitioner-appellee. They claim[30] that the court a quo erred in holding that the department orders were issued in the exercise of ministerial functions pursuant to Secretary De Lima's duty to investigate the commission of crimes under Executive Order No. 29, or the Revised Administrative Code of 1987, and the President's order to conduct an investigation.

Further, respondents-appellants insist[31] that the requisites of judicial review are not present in the instant case. First, there is no more actual controversy on the ground that any issue regarding the assailed department orders had been rendered moot and academic since the submission of the Report of the Fact-Finding Panel to Secretary De Lima and its eventual transmittal to President Aquino, the NPS, and the Office of the Ombudsman rendered DO No. 1007 *functus officio*. With respect to DO No. 47, the same has already been revoked by Secretary De Lima, thus, the court a quo could not exercise its power of judicial review[32]. Second, petitioner-appellee has no legal standing to challenge the constitutionality of the assailed department orders[33]. Third, petitioner-appellee failed to raise the issue of constitutionality at the earliest possible time, having filed the petition more than a month after its issuance and after the Fact-Finding Panel issued its report recommending the filing of criminal charges against petitioner-appellee[34]. Fourth, the issue of constitutionality is not the *lis mota* of the case[35].

The power of judicial review is set forth in Section 1, Article VIII of the Constitution, to wit:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Article VIII, Section 1 of the Constitution has vested judicial power in the Supreme Court and the lower courts, as established by law. Although the courts are without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government and are not empowered to execute absolutely their own judgment from that of Congress or of the President, the Court may look into and resolve questions of whether or not such judgment has been made with grave abuse of discretion, when the act of the legislative or executive department violates the law or the Constitution.[36]

When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are complied with, namely: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case[37].

The power of judicial review is limited to actual cases or controversies[38]. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence[39].

Closely related to the requirement of an "actual case," is the requirement that the question is "ripe" for adjudication[40]. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of[41].

On the other hand, a case becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial[42].

That the Panel has been deemed *functus officio* cannot render the case at bench moot and academic. The proceedings before the Panel resulted in the issuance of a Report implicating petitioner-appellee in the commission of the felony of kidnapping and serious illegal detention, and recommended the filing of administrative and criminal charges against him. Be it noted that the Report is the "fruit" of the proceedings before the Panel and copies of which were transmitted to President Aquino, the Ombudsman and the NPS, ostensibly for further appropriate action of the said offices/agencies, and as such, petitioner-appellee stands to suffer and continues to suffer from the deleterious effects of the Report. Thus, fulfilling the requirement for judicial review, of the existence of an actual and appropriate case herein.

Moreover, since it is petitioner-appellee who stands to suffer from the effects of the Report and its transmittal to the NPS, the Ombudsman and to President Aquino (who immediately relieved petitioner-appellee as NBI director), petitioner-appellee has the legal standing to question the issuances of Secretary De Lima. "Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged[43]. Hence, the second requirement for judicial review – that a personal and substantial interest of the party raising the constitutional question, is present.

It must be emphasized that DO No. 47 was only revoked by Secretary De Lima because of the injunction issued by the court *a quo*. Thus, once the injunction is lifted, the possibility exists that another order of the same nature will be issued.

Respondent-appellee also submits[44] that aside from mootness, petitioner-appellee should be estopped since he never questioned the creation of the Fact-Finding Panel until the issuance of the Report.

Obviously, petitioner-appellee could not have raised the constitutionality of the department orders at the time of issuance since he was not informed that he was implicated, or was a suspect or person in interest, in the

investigation being conducted by the Panel. He attended the proceedings believing that he was merely a “resource person”. It was only upon the release of the Report that he came to know that he was a person of interest and was recommended for administrative sanction and criminal liability. That petitioner-appellee took immediate action by filing the petition before the court a quo belies respondents-appellants' claim of estoppel.

The last requisite of *lis mota* which literally means “the cause of the suit or action” is simply an offshoot of the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government. Ultimately, it is rooted in the principle of separation of powers. Given the presumed validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court.[45] The Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative[46].

The main issues of the petition filed before the court a quo are the constitutionality and legality of DO No. 1007 creating the Fact-Finding Panel as well as the proceedings undertaken pursuant thereto, and DO No. 47 ordering the reinvestigation of petitioner-appellee. Moreover, petitioner-appellee questions, based on constitutional grounds, the validity of the proceedings undertaken by the Fact-Finding Team which resulted in the recommendation of the conduct of preliminary investigation.[47] The court a quo already declared the assailed department orders as constitutional. It did not invalidate the assailed department orders of Secretary De Lima and said finding is not questioned before this Court. The creation of the Fact-Finding Panel is thus valid and constitutional. In fact, this is not the first time that the courts validated a fact-finding panel created to determine who should be subjected to preliminary investigation for certain crimes. In *Evangelista vs. Jarencio*[48], the Supreme Court recognized the conduct of a fact-finding investigation as part of the administrative process, thus:

It has been essayed that the life blood of the administrative process is the flow of fact, the gathering, the organization and the analysis of evidence. Investigations are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending, legislation, and for purposes no more specific than illuminating obscure areas to find out what if anything should be done. An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or judicial nature may be taken and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction, and to report findings to appropriate bodies and make recommendations for actions.

It must, however, be emphasized that the issues in this case involve two aspects: one, the constitutionality of the department orders, and the other, the constitutionality of the proceedings undertaken pursuant to the department orders. After confirming the validity of the creation of the Panel, We now turn to the allegation that petitioner-appellee's constitutional rights, particularly his right to counsel, right against self-incrimination and right to due process were violated by the Fact-Finding Panel during its proceedings.

The court a quo held[49], and We affirm, that the circumstances of the case reveal that the constitutional rights of petitioner-appellee to counsel and to remain silent were violated when he attended the investigation conducted by the Panel.

Respondents-appellants counter[50] that the right to remain silent and the right to have a competent and

independent counsel apply only from the time a person is taken into custody for investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect although not yet in custody. More importantly, there must be an arrest or a deprivation of freedom with questions propounded on the accused by the police authorities for the purpose of eliciting admissions, confessions, or any information before the protective mantle of Section 12, Article III of the 1987 Constitution may be invoked.

Under Section 12(1) Art. III of the Constitution, "(a)ny person under investigation for the commission of an offense shall have the right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel." To insure that a waiver is voluntary and intelligent, the Constitution[51] requires that for the right to counsel to be waived, the waiver must be in writing and in the presence of the counsel of the accused[52]. Any evidence obtained in violation of the constitutional mandate is inadmissible in evidence[53]. When an admission or confession was obtained while violating a person's right to counsel, said admission or confession is inadmissible in evidence against him[54].

In *People of the Philippines vs. Rapeza*[55], the Supreme Court explained the essence of a person's right to remain silent and to have a competent and independent counsel preferably of his own choice during custodial investigation, thus:

A person under custodial investigation essentially has the right to remain silent and to have competent and independent counsel preferably of his own choice and the Constitution requires that he be informed of such rights. The *raison d'être* for this requirement was amply explained in *People v. Ayson* where this Court held, to wit:

x x x x

In *Miranda*, Chief Justice Warren summarized the procedural safeguards laid down for a person in police custody, "in-custody interrogation" being regarded as the commencement of an adversary proceeding against the suspect.

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise those rights must be afforded to him throughout the interrogation. After such warnings have been given, such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer or make a statement. But unless and until such warnings and waivers are demonstrated by the prosecution at the trial, no evidence obtained as a result of interrogation can be used against him.

The objective is to prohibit "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statement without full warnings of constitutional rights." The rights above specified, to repeat, exist only in "custodial interrogations," or "in-custody interrogation of accused persons." And, as this Court has already stated, by custodial interrogation is meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

A deprivation of the right to counsel divests the accused of an equality in arms resulting in the denial of a level playing field, so to speak.[56] In *People of the Philippines vs. Liwanag*[57], the Supreme Court highlighted the importance of the right of an accused to counsel:

In essence, the right to be heard by counsel simply refers to the right to be assisted by counsel for the purpose of ensuring that an accused is not denied the collateral right to due process, a fundamental right which cannot be waived by an accused. The underlying basis for due process is the concept of fairness, without which there

can be no justice. In other words, there can be no due process accorded an accused if he is not given the right to be heard through counsel or assisted by counsel. It follows that in order to be heard, and therefore be accorded due process, the assistance given by counsel must be "effective" as implied in the rationale of Article III, Section 14 (2). In this sense, this Court subscribes to American jurisprudence when it held that "[t]he right of an accused to counsel is beyond question a fundamental right. Without counsel, the right to a fair trial itself would be of little consequence, for it is through counsel that the accused secures his other rights. In other words, the right to counsel is the right to effective assistance of counsel."

The guarantees of Sec. 12 (1), Art. III of the 1987 Constitution, or the so-called Miranda rights, may be invoked only by a person while he is under custodial investigation. Custodial investigation starts when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements[58].

To support their claim that there was no custodial investigation and no constitutional right was violated, respondents-appellants raise the following admissions of petitioner-appellee: that he was not arrested or deprived of his freedom when he appeared before the Panel[59]; that he was not compelled to appear before the Panel[60]; that he freely and truthfully answered the questions propounded to him and he never felt threatened or intimidated[61]; that he never felt intimidated by any of the person present during the investigation and he never had any feeling that he was the subject of the investigation[62].

On the other hand, in finding that the petitioner-appellee was under custodial investigation, the court a quo held:

Although the members of the Fact-Finding Panel are not police officers, this Court rules that such fact would not automatically render the application of the constitutional provisions and R.A. No. 7439 nugatory. It should be noted that the respondents who are members of the Fact-Finding Panel conducted the investigation with the end goal of formulating a recommendation of what probable action should be taken against those who will be found liable. Consequently, the Panel recommended the filing of a criminal case against petitioner for kidnapping and serious illegal detention. In doing so, it may be said that the members of the Panel acted as how police officers would act and determined probable cause for purposes of recommending the filing of a criminal complaint against the petitioner.

It is true that at the time of the investigation of petitioner, he was not arrested nor detained by the Panel. However, the circumstances of the case [show] that petitioner was "investigated in connection with an offense he is suspected to have committed" which would bring him under the provisions of R.A. No. 7438.xxx[63]

We agree with the RTC.

An investigation begins when it is no longer a general inquiry but starts to focus on a particular person as a suspect, i.e., when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense. The moment the police try to elicit admissions or confessions or even plain information from a person suspected of having committed an offense, he should, at that juncture, be assisted by counsel, unless he waives the right in writing and in the presence of counsel.[64] It has been repeatedly held that custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of the crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission[65].

It must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during "custodial investigation", which has been broadened to cover a person who is investigated in connection with an offense he is suspected to have committed as provided in Republic Act No. 7438[66], viz:

SECTION 2. Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers.

- a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.
- b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.
- c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.
- xxx e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

xxx

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. (Emphasis supplied)

Thus, in *People of the Philippines vs. Muleta*[67], the Supreme Court held that an accused who was “invited” by an NBI agent was in reality subjected to custodial investigation targeting therein accused for the purpose of procuring a confession. Consequently, he should have been accorded the right to counsel (and all the constitutional rights of the accused), from the time that he was brought to the NBI office in Manila.

In the instant case, while the creation of the Panel was valid and constitutional, We cannot discount the fact that petitioner-appellee was “invited” to attend the hearing on the pretext that he would only be a resource person, not knowing or being apprised that Cabillan already implicated him in his affidavit[68], which affidavit was in fact executed on December 15, 2011, before the “invitation” was sent to petitioner-appellee. As such, petitioner-appellee was not given the opportunity to be represented by counsel and was not even asked if he needed one. To Our mind, due to this circumstance, it is not far-fetched to conclude that petitioner-appellee was invited by the Panel not only as a “resource person”, as what respondents-appellants would make it appear, but to determine his probable involvement in the crime. Moreover, petitioner-appellee was not informed of the actual nature of the invitation; hence, his presence before the Panel was as a resource person, and not as an accused prepared to defend himself.

It must be borne in mind that the Panel was created to investigate and to submit recommendations on who should be charged criminally and administratively. A careful scrutiny of the facts attendant to the case basically shows that aside from being a mere fact-finding body, the Panel also functioned as a prosecutor, specifically created to determine criminal liability for the kidnapping and serious illegal detention of Ohara.

With respect to the violation of petitioner-appellee's right against self-incrimination, respondents-appellants aver that the proceedings conducted by the Panel did not possess a criminal or penal aspect as it was merely tasked to investigate the facts and petitioner-appellee failed to point out the alleged incriminating questions that he answered when he appeared before the Panel. For failure to timely raise his right against self-incrimination, respondents-appellants claim that petitioner-appellee in effect waived his right thereto[69].

Under Article III, Section 17 of the Constitution, no person shall be compelled to be a witness against himself. The right is a prohibition against the use of physical or moral compulsion to extort communications from the accused. It is simply a prohibition against legal process to extract from the accused's own lips, against his will, admission of his guilt[70].

The right against self-incrimination is accorded to every person who gives evidence, whether voluntary or under compulsion of subpoena, in any civil, criminal or administrative proceeding. The right is not to be compelled to be a witness against himself. It secures to a witness, whether he be a party or not, the right to refuse to answer any particular incriminatory question, i.e., one the answer to which has a tendency to incriminate him for some crime. However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, decline to appear before the court at the time appointed, or to refuse to testify altogether. The witness receiving a subpoena must obey it, appear as required, take the stand, be sworn and answer questions. It is only when a particular question is addressed which may incriminate the witness for some offense that the witness may refuse to answer on the strength of the constitutional guaranty[71].

The rule is only an accused in a criminal case can refuse to take the witness stand. The right to refuse to take the stand does not generally apply to parties in administrative cases or proceedings. The parties thereto can only refuse to answer if incriminating questions are propounded. However, the Supreme Court applied the exception – a party who is not an accused in a criminal case is allowed not to take the witness stand – in administrative cases/proceedings that partook of the nature of a criminal proceeding or analogous to a criminal proceeding[72].

In the case at bar, petitioner-appellee was already implicated as a suspect in the crime of kidnapping and serious illegal detention. If he had been supplied with such information, he would very well have refused to testify before the Panel as he had the right to do so. It is erroneous to say that he could just have refused to answer once an incriminating question is propounded to him because, being a person of interest, it was within his right to deny the invitation to attend the proceeding and to refuse to answer even a single question from the Panel, whether incriminating or not. Having withheld this vital information, the Panel was in bad faith when it issued the “invitation” and set as under the constitutional rights of petitioner-appellee in the proceedings it undertook. It is of no moment that the Panel are not police investigators, for as public officials it was incumbent upon them to observe the express mandate of the Constitution[73]. Thus, the statements of petitioner-appellee, taken in violation of his rights to counsel and against self-incrimination, in the fact-finding proceedings could not be admitted in evidence being a classic case of a fruit of the poisonous tree.

The discussion hereinabove shows that, indeed, the constitutional question is the crux of the judicial review.

This Court finds that aside from violating petitioner-appellee's rights to counsel and against self-incrimination under Sections 12 and 17, Article III of the Constitution, petitioner-appellee was also denied due process.

We concur with the observation of the court a quo that the test of fairness and due process noticeably has failed because the Panel itself cannot be considered as disinterested persons[74]. Petitioner-appellee was clearly denied due process. First, it was Secretary De Lima who issued the orders establishing the Fact-Finding Panel which is composed of DOJ officials/prosecutors. Second, the Report of the Panel recommending the conduct of preliminary investigation was referred to the NPS composed of subordinates of the Panel. Third, whatever the result of the preliminary investigation may be, it would still be subject to the appellate review of the Secretary of Justice, in this case, Secretary De Lima. Petitioner-appellee clearly was left with no other recourse but to seek judicial review.

Although it is within the power of Secretary De Lima, as head of the DOJ to create a panel of prosecutors to

determine administrative liability however, when it comes to determining criminal liability, such panel ceases to be a fact-finding panel, and is constituted as a panel for the conduct of preliminary investigations tasked to determine whether or not there exists probable cause to warrant the filing of an information in court, and not merely to gather evidence.

It is settled that the conduct of preliminary investigation is, like court proceedings, subject to the requirements of both substantive and procedural due process. Preliminary investigation is considered as a judicial proceeding wherein the prosecutor or investigating officer, by the nature of his functions, acts as a quasi-judicial officer. The authority of a prosecutor or investigating officer duly empowered to preside over or to conduct a preliminary investigation is no less than that of a municipal judge or even an RTC Judge[75]. Further, the preliminary investigation can be no different from the in-custody interrogations by the police, for a suspect who takes part in a preliminary investigation will be subjected to no less than the State's processes, oftentimes intimidating and relentless, of pursuing those who might be liable for criminal prosecution[76]. Petitioner-appellee was not even given the opportunity to submit his counter-affidavit to present his side. The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense[77]. Though he was able to answer the queries of the Panel, petitioner-appellee was not really "defending" himself as he did not know that allegations had been made implicating him to the crime and that he was a person of interest. For depriving petitioner-appellee of his right to due process, even as to his administrative liability, as recommended in the Report, it is only proper that the whole proceeding be declared null and void; consequently, the evidence against petitioner-appellee gathered by the Panel shall be inadmissible in any other proceeding.

Lastly, We note the Decision of this Court dated March 5, 2013 in CA-GR SP No. 126597 entitled Magtanggol B. Gatdula vs. Department of Justice Prosecutor General Claro A. Arellano, et al. allowing the preliminary investigation of the case to continue, but holding as inadmissible all the supporting affidavits in the complaint filed by Ohara which were obtained during the fact-finding investigation. It must be emphasized that this Court did not rule on the propriety of the declaration of inadmissibility of the evidence presented before the Panel because the same was not the issue in the said case. Thus,

Neither can We give our stamp of approval to respondents' contention that assuming there was violation of petitioner's constitutional right, still only the testimonial and documentary evidence obtained from petitioner should be invalidated, while the evidence of others, like the affidavit of Ohara and her witnesses will have to remain. To reiterate, a petition for certiorari is intended to correct only errors of jurisdiction where the court or tribunal has acted with grave abuse of discretion. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Thus, the conclusions reached by the RTC Manila, which is still on the way toward final crystallization, may not be properly assailed via the instant proceedings.[78]

The case at bar now resolves the issue regarding the admissibility of evidence, and affirms the finding of the RTC, so far as it impacts upon petitioner-appellee. While the creation of the Panel was constitutional, the evidence gathered against petitioner-appellee from the proceedings of the Panel up to its issuance of the Report, regarding his administrative and criminal liability, are hereby declared as the "poisonous tree" and the "fruits" therefrom cannot be consumed by any other body. That the manner of the Panel's proceedings was cordial is immaterial and irrelevant. In reality, petitioner-appellee, not knowing that he was being implicated in a crime or that he would be held administratively liable, was denied due process and robbed of his constitutional rights.

This Court cannot permit and stay on the sidelines when the rights of a person, whether a high-ranking official or an ordinary civilian, have been violated. The law shall apply to all and no one shall be deprived thereof. Certiorari and Prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials[79]. While the public prosecutor alone determines the

sufficiency of evidence that will establish probable cause in filing a criminal information, it is within the courts' power to intervene when it is shown that there is grave abuse of discretion[80], as in this case.

WHEREFORE, premises considered, the Appeal is DENIED. The Decision dated January 29, 2013 and the Order dated May 8, 2013 of the Regional Trial Court of Manila, Branch 8, in Civil Case No. 12-127186 are AFFIRMED. The proceedings of the Fact-Finding Panelsofar as petitioner-appellee Magtanggol B. Gatdula is concerned, is hereby declared NULL and VOID and the evidence obtained against him by the Fact-Finding Panel created under Department Order No. 1007 are INADMISSIBLE in evidence in any other proceeding.

SO ORDERED.

Didican, I. P., Chairperson, and Ybañez, E. A., JJ., concur.

[1] Rollo, pp. 9-73.

[2] Rollo, pp. 74-5.

[3] Respondents-appellants Comment Ad Cautelam, records, Vol. III, p. 89.

[4] Records, Vol. III, p. 152.

[5] Respondents-appellants Comment Ad Cautelam, records, Vol. III, p. 89.

[6] Records, Vol. II, pp. 403-4.

[7] Letter dated December 21, 2011; Records, Vol. II, p. 407.

[8] TSN dated January 30, 2012 of petitioner-appellee on the application for TRO, Records, Vol. III, p. 792.

[9] Records, Vol. I, pp. 74-252.

[10] Respondents-Appellants' Comment Ad Cautelam, records, Vol. III, p. 90.

[11] Records, Vol. I, pp. 231-5.

[12] Records, Vol. I, pp. 235-7.

[13] Records, Vol. I, p. 232.

[14] Records, Vol. I, p. 253.

[15] Letter of Secretary De Lima to the Office of the Ombudsman dated January 20, 2012, records, Vol. II, pp. 408-9.

[16] Memorandum dated January 20, 2012, records, Vol. II, pp. 410-1.

[17] Records, Vol. II, p. 405.

[18] D.O. No. 047, records, Vol. II, p. 405.

[19] Records, Vol. I, pp. 10-71.

[20] Records, Vol. I, pp. 1-3.

[21] Order dated January 31, 2012, records, Vol. I, pp. 307-13

[22] Records, Vol. III, p. 209.

- [23] Order dated February 20, 2012, records, Vol. I, pp. 467-76.
- [24] Rollo, pp. 9-73, 72.
- [25] Motion for Partial Reconsideration dated February 13, 2013, records, Vol. IV, pp. 1-22.
- [26] Rollo, pp. 74-5.
- [27] Rollo, p. 82.
- [28] Rollo, p. 94.
- [29] Rollo, pp. 95-6.
- [30] Rollo, p. 103.
- [31] Rollo, p. 109.
- [32] Rollo, pp. 110-2.
- [33] Rollo, p. 114.
- [34] Rollo, p. 116.
- [35] Rollo, p. 116.
- [36] Domingo vs. Scheer, GR No. 154745, January 29, 2004.
- [37] Integrated Bar of the Philippines vs. Zamora, GR No. 141284, August 15, 2000.
- [38] Province of North Cotabato vs. Government of the Republic of the Philippines Peace Panel on Ancestral Domain, GR Nos. 183591, 183752, 183893, 183951, 183962, October 14, 2008.
- [39] Id.
- [40] See Guingona vs. Court of Appeals, GR No. 125532, July 10, 1998.
- [41] Supra, note 38.
- [42] Arroyo vs. Department of Justice, GR No. 199082, September 18, 2012.
- [43] Supra, note 37.
- [44] Rollo, p. 118.
- [45] See General vs. Urro, GR No. 191560, March 29, 2011.
- [46] Garcia vs. Executive Secretary, GR No. 157584, April 2, 2009.
- [47] Supra, note 42.
- [48] GR No. L-29274, November 27, 1975.
- [49] Rollo, p. 33.
- [50] Rollo, pp. 123-4.
- [51] Art. III, Section 12(1), Constitution.
- [52] People of the Philippines vs. Del Castillo, GR No. 153254, September 30, 2004.

- [53] People of the Philippines vs. Pavillare, GR No. 129970, April 5, 2000.
- [54] Section 12, Art. III of the Constitution.
- [55] GR No. 169431, April 3, 2007.
- [56] People vs. Serzo, Jr., GR No. 118435, June 20, 1997.
- [57] G.R. No. 120468, August 15, 2001.
- [58] People of the Philippines vs. Lara, GR No. 199877, August 13, 2012 citing People of the Philippines vs. Amestuzo, 413 Phil. 500 (2001).
- [59] Rollo, p. 124.
- [60] Rollo, p. 126.
- [61] Rollo, p. 127.
- [62] Rollo, p. 128.
- [63] Decision dated January 29, 2013, Rollo, pp. 53-4.
- [64] People vs. Valdez, GR No. 129296, September 25, 2000.
- [65] People of the Philippines vs. Pavillare, GR No. 129970, April 5, 2000.
- [66] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation As Well As the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violation Thereof.
- [67] G.R. No. 130189, June 25, 1999.
- [68] Exh. "EE", Report of the Fact-Finding Panel.
- [69] Rollo, pp. 148-9.
- [70] Ong vs. Sandiganbayan, GR No. 126858, September 16, 2005.
- [71] Rosete vs. Lim, GR No. 136051, June 8, 2006.
- [72] Id.
- [73] See People of the Philippines vs. Baloloy, GR No. 140740, April 12, 2002.
- [74] Rollo, p. 69.
- [75] Supra, note 42.
- [76] People vs. Sunga, GR No. 126029, March 27, 2003.
- [77] Ocampo vs. Abando, GR No. 176830, February 11, 2004.
- [78] Pages 15-16 of the Decision dated March 5, 2013 in CA-GR SP No. 126597.
- [79] Supra, note 38.
- [80] See Manila Electric Company vs. Atilano, GR No. 166758, June 27, 2012.

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