

**DIOSDADO JOSE ALLADO AND ROBERTO L. MENDOZA,
PETITIONERS, VS. HON. ROBERTO C. DIOKNO, PRESIDING JUDGE, BR.
62, REGIONAL TRIAL COURT, MAKATI, METRO MANILA, AND
PRESIDENTIAL ANTI-C...**

G.R. No. 113630. May 05, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On balance at the fulcrum once again are the intrinsic right of the State to prosecute perceived transgressors of the law, which can be regulated, and the innate value of human liberty, which can hardly be weighed.

Some twelve years ago we were confronted with a similar problem when former Senator Jovito R. Salonga invoked before this Court his "right to life and liberty guaranteed by the due process clause, alleging that no prima facie case has been established to warrant the filing of an information for subversion against him." [1] We resolved the issue then and sustained him. He is now back before us, this time as counsel pleading the cause of petitioners herein who, he claims, are in a situation far worse than his predicament twelve (12) years ago. He postulates that no probable cause likewise exists in this case, and what is worse is that no bail is recommended.

This petition gives us an opportunity to revisit the concept and implication of probable cause, the existence of which is necessary for the prosecutor to have an accused held for trial and for a trial judge to issue a warrant for his arrest. It is mandatory therefore that there be probable cause before an information is filed and a warrant of arrest issued. Unfortunately, however, at times a criminal case is filed, a warrant of arrest issued and a person consequently incarcerated on unsubstantiated allegations that only feign probable cause.

Petitioners Diosdado Jose Allado and Roberto L. Mendoza, alumni of the College of Law, University of the Philippines, are partners of the Law Firm of Salonga, Hernandez and Allado. In the practice of their profession, and on the basis of an alleged extrajudicial confession of a security guard, they have been accused of the heinous crime of kidnapping with murder by the Presidential Anti-Crime Commission (PACC) and ordered arrested without bail by respondent judge.

The focal source of the information against petitioners is the sworn statement dated 16 September 1993 of Security Guard Escolastico Umbal, a dischargee of the Philippine Constabulary, implicating them as the brains behind the alleged kidnapping and slaying of one Eugen Alexander Van Twest, a German national. [2] In that extrajudicial confession, Umbal claimed that he and his companions were met by petitioners at Silahis Hotel and in exchange for P2.5M the former undertook to apprehend Van Twest who allegedly had an international warrant of arrest against him. Thus, on 16 June 1992, after placing him under surveillance for nearly a month, Umbal, Ex-policeman Rolando Gamatero, AFPCIG Agent Roberto Santiago and SPO2 Sergio Antonino abducted Van Twest. They blocked his blue Nissan Pathfinder under the Alabang overpass and forced him into their car. They brought him to a "safe house" just behind the New Bilibid Prisons. Umbal was tasked to watch over their quarry. After four (4) days, Gamatero, Santiago and Antonino returned to the "safe house" together with petitioners and

SPO2 Roger Bato, known to Umbal also as "Batok." SPO2 Bato faked the interrogation of Van Twest, pretending it was official, and then made him sign certain documents. The following day, Gamatero shot Van Twest in the chest with a baby armalite, after which Antonino stabbed him repeatedly, cut off his private part, and later burned his cadaver into fine ashes using gasoline and rubber tires. Umbal could not recall the exact date when the incident happened, but he was certain it was about a year ago.

A day after Umbal executed his extrajudicial confession, the operatives of the PACC, armed with a search warrant issued by Judge Roberto A. Barrios of the Regional Trial Court of Manila, Br. 11,[3] separately raided the two (2) dwellings of Santiago, one located at No. 7 Sangley Street, and the other, along Amalingan Street, both in Green Heights Subdivision, Parañaque. The raiders recovered a blue Nissan Pathfinder and assorted firearms and ammunition and placed Santiago and his trusted aide, Efren Madolid, under arrest. Also arrested later that day were Antonino and Bato who were found to have in their possession several firearms and ammunition and Van Twest's Cartier sunglasses.

After evaluating the pieces of evidence gathered by PACC operatives, Sr. Supt. Panfilo Lacson, Chief of PACC Task Force Habagat, referred the case to the Department of Justice for the institution of criminal proceedings against AFPCIG Agent Roberto Santiago, SPO1 Sergio Antonino, SPO2 Roger Bato, Ex-policeman Rolando Gamatero, Efren Madolid, and petitioners herein, Atty. Diosdado Jose Allado and Atty. Roberto L. Mendoza, for illegal possession of firearms and ammunition, carnapping, kidnapping for ransom with murder, and usurpation of authority.[4] In his letter to the State Prosecutor dated 17 September 1993, Sr. Supt. Lacson charged that -

Atty. Roberto L. Mendoza and Atty. Allado of Salonga, Hernandez and Allado Law Offices x x x planned and conspired with other suspects to abduct and kill the German national Alexander Van Twest in order to eliminate him after forcing the victim to sign several documents transferring ownership of several properties amounting to several million pesos and caused the withdrawal of P5M deposit from the victim's bank account.

Thereafter, Senior State Prosecutor Ferdinand R. Abesamis issued a subpoena to petitioners informing them that a complaint was filed against them by PACC TF-Habagat, directing them to appear on 30 September 1993 at the Multi-Purpose Hall of the Department of Justice and to submit their counter-affidavits. Attached to the subpoena were copies of the affidavits executed by Umbal and members of the team who raided the two (2) dwellings of Santiago.[5]

Not satisfied merely with the affidavits attached to the subpoena, petitioner Mendoza moved for the production of other documents for examination and copying to enable him to fully prepare for his defense and to submit an intelligible counter-affidavit.[6] Specifically, petitioner Mendoza was interested in (a) the "several documents transferring ownership of several properties amounting to several million pesos and the withdrawal of P5M deposits from the victim's bank account," as stated in the complaint; (b) the complete records of the PACC's investigation, including investigations on other suspects and their disposition, PACC's Order of Battle for 1992 and early 1993; and, (c) such other written statements issued in the above-entitled case, and all other documents intended to be used in this case.[7] Petitioners likewise sought the inhibition of the members of the panel of prosecutors, which was created to conduct the preliminary investigation, on the ground that they were members of the legal staff assigned to PACC and thus could not act with impartiality.

In its Order of 11 October 1993,[8] the new panel of prosecutors composed of Senior State Prosecutor Bernelito R. Fernandez as Chairman, with Rogelio F. Vista and Purita M. Deynata as Members, confirmed that the motion for inhibition of the members of the old panel as well as the appeal to the Secretary of Justice was resolved on 8 October 1993 resulting in the creation of a new panel. Thereafter, the new panel granted the prayer of petitioner Mendoza for the production of additional documents used or intended to be used against him. Meanwhile, Task Force Habagat, in compliance with the order, submitted only copies of the request for verification of the firearms

seized from the accused, the result of the request for verification, and a Philippine Times Journal article on the case with a marginal note of President Fidel V. Ramos addressed to the Chief of the Philippine National Police directing the submission of a report and summary of actions taken thereon.

Not having been provided with the requested documents, petitioners nevertheless submitted their respective counter-affidavits denying the accusations against them.[9]

After a preliminary hearing where clarificatory questions were additionally propounded, the case was deemed submitted for resolution. But before the new panel could resolve the case, SPO2 Bato filed a manifestation stating that he was reconsidering the earlier waiver of his right to file counter-affidavit,[10] and "in the greater interest of truth, justice and fair play" moved for the admission of his counter-affidavit[11] confessing participation in the abduction and slaying of Van Twest and implicating petitioners Allado and Mendoza. Sometime in January 1994, however, before petitioners could refute Bato's counter-affidavit, he moved to suppress it on the ground that it was extracted through intimidation and duress.

On 3 February 1994, with the new panel failing to act on the twin motions of SPO2 Bato, petitioners heard over the radio that the panel had issued a resolution finding a prima facie case against them and that an information had already been filed in court. Upon verification with the Department of Justice, however, petitioners were informed that the resolution was not yet ready for release, but later that afternoon they were able to secure a copy of the information for kidnapping with murder against them[12] and the 15-page undated resolution under the letterhead of PACC, signed by the panel of prosecutors, with the Head of the PACC Task Force recommending approval thereof.[13] That same day, the information was filed before the Regional Trial Court of Makati and raffled off to Branch 62 presided by respondent Judge Roberto C. Diokno.

On 4 February 1994, respondent judge, in response to petitioners' request, gave them until 8 February 1994 to submit their opposition to the issuance of a warrant of arrest against all the accused.[14] On 7 February 1994, petitioners complied with the order of respondent judge.[15] The following day, 8 February 1994, petitioner Allado filed an appeal with the Secretary of Justice seeking review and reversal of the undated resolution of the panel of prosecutors,[16] which appeal was adopted by petitioner Mendoza.[17] On 11 February 1994, petitioner Allado moved to defer the proceedings before the trial court pending resolution of his appeal before the Secretary of Justice.[18] However, on even date, respondent judge issued the assailed warrant of arrest against petitioners.[19] Hence, on 15 February 1994, petitioners filed with us the instant petition for certiorari and prohibition with prayer for a temporary restraining order.

On 16 February 1994, we required respondents to comment on the petition and set the case for hearing on 28 February 1994. After the hearing, we issued a temporary restraining order enjoining PACC from enforcing the warrant of arrest and respondent judge from conducting further proceedings on the case and, instead, to elevate the records to us. Meanwhile, on 27 February 1994, petitioners voluntarily surrendered at the Headquarters of the Capital Command (CAPCOM), Philippine National Police (PNP), Camp Bagong Diwa, Bicutan, Metro Manila, and on 29 February 1994, they were released on the basis of our temporary restraining order.

Petitioners, in their 335-page petition, inclusive of annexes, principally contend that respondent judge acted with grave abuse of discretion and in excess of jurisdiction in "whimsically holding that there is probable cause against petitioners without determining the admissibility of the evidence against petitioners and without even stating the basis of his findings,"[20] and in "relying on the Resolution of the Panel and their certification that probable cause exists when the certification is flawed." [21] Petitioners maintain that the records of the preliminary investigation which respondent judge solely relied upon failed to establish probable cause against them to justify the issuance of the warrant of arrest. Petitioners likewise assail the prosecutors' "clear sign of bias and impartiality (sic)."[22]

On the other hand, the Office of the Solicitor General argues that the determination of probable cause is a function of the judge who is merely required to personally appreciate certain facts to convince him that the accused probably committed the crime charged.

Section 2, Art. III, of the 1987 Constitution, lays down the requirements for the issuance of a warrant of arrest, i.e., a warrant of arrest shall issue only upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.

As early as 1915, in *Buchanan v. Viuda de Esteban*,^[23] this Court speaking through Associate Justice Sherman Moreland defined probable cause 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." This definition is still relevant today as we continue to cite it in recent cases.^[24] Hence, probable cause for an arrest or for the issuance of a warrant of arrest has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.^[25] And as a protection against false prosecution and arrest, it is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for arresting the accused.^[26]

Pilapil v. Sandiganbayan^[27] sets a standard for determining the existence of probable cause. While it appears in that case that we have granted the prosecutor and the trial judge seemingly unlimited latitude in determining the existence or absence of probable cause by affirming the long-standing procedure that they can base their findings merely on their personal opinion and reasonable belief, yet, this permissiveness should not be interpreted as giving them arbitrary powers and letting them loose in the determination of the existence of probable cause, a delicate legal question which can result in the harassment and deprivation of liberty of the person sought to be charged or arrested. There we said -

Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded, 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 and 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. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Whether an act was done causing undue injury to the government and whether the same was done with manifest partiality or evident bad faith can only be made out by proper and sufficient testimony. Necessarily, a conclusion can be arrived at when the case has already proceeded on sufficient proof.^[28]

Accordingly, before issuing a warrant of arrest, the judge must satisfy himself that based on the evidence submitted there is sufficient proof that a crime has been committed and that the person to be arrested is probably guilty thereof. In the Order of respondent judge dated 11 February 1994, it is expressly stated that "[t]his court after careful evaluation of the evidence on record, believes and rules that probable cause exists; and therefore, a warrant of arrest should be issued." However, we are unable to see how respondent judge arrived at such ruling. We have painstakingly examined the records and we cannot find any support for his conclusion. On the contrary, we discern a number of reasons why we consider the evidence submitted to be insufficient for a finding of probable cause against petitioners.

The Presidential Anti-Crime Commission relies heavily on the sworn statement of Security Guard Umbal who supposedly confessed his participation in the alleged kidnapping and murder of Van Twest. For one, there is serious doubt on Van Twest's reported death since the corpus delicti has not been established, nor have his

remains been recovered. Umbal claims that Van Twest was completely burned into ashes with the use of gasoline and rubber tires from around ten o'clock in the evening to six o'clock the next morning.[29] This is highly improbable, if not ridiculous. A human body cannot be pulverized into ashes by simply burning it with the use of gasoline and rubber tires in an open field. Even crematoria use entirely closed incinerators where the corpse is subjected to intense heat.[30] Thereafter, the remains undergo a process where the bones are completely ground to dust.

In the case of Van Twest, there is not even any insinuation that earnest efforts were exerted to recover traces of his remains from the scene of the alleged cremation.[31] Could it be that the government investigators did go to the place of cremation but could not find any? Or could it be that they did not go at all because they knew that there would not be any as no burning ever took place? To allege then that the body of Van Twest was completely burned to ashes in an open field with the use merely of tires and gasoline is a tale too tall to gulp.

Strangely, if not awkwardly, after Van Twest's reported abduction on 16 June 1992 which culminated in his decimation by cremation, his counsel continued to represent him before judicial and quasi-judicial proceedings. Thus on 31 July 1992, his counsel filed in his behalf a petition for review before this Court, docketed as G.R. No. 106253, and on 18 March 1993, a memorandum before the Securities and Exchange Commission in SEC Case No. 3896. On 26 November 1993, during the preliminary investigation conducted by the panel of prosecutors, counsel again manifested that "even then and even as of this time, I stated in my counter-affidavit that until the matter of death is to be established in the proper proceedings, I shall continue to pursue my duties and responsibilities as counsel for Mr. Van Twest." [32] Hence, even Asst. Solicitor General Estoesta believes that counsel of Van Twest doubted the latter's death.[33] Obviously, counsel himself does not believe that his client is in fact already dead otherwise his obligation to his client would have ceased except to comply with his duty "to inform the court promptly of such death x x x and to give the name and residence of his executor, administrator, guardian or other legal representative," [34] which he did not.

Under the circumstances, we cannot discount petitioners' theory that the supposed death of Van Twest who is reportedly an international fugitive from justice, a fact substantiated by petitioners and never refuted by PACC, is a likely story to stop the international manhunt for his arrest. In this regard, we are reminded of the leading case of *U.S. v. Samarin* [35] decided ninety-two years ago where this Court ruled that when the supposed victim is wholly unknown, his body not found, and there is but one, witness who testifies to the killing, the corpus delicti is not sufficiently proved.

Then, the extrajudicial statement of Umbal suffers from material inconsistencies. In his sworn statement, he said that he together with his cohorts was met by petitioners in Silahis Hotel where they hatched the plan to abduct Van Twest.[36] However, during the preliminary investigation, he stated that he was not part of the actual meeting as he only waited outside in the car for his companions who supposedly discussed the plan inside Silahis Hotel.[37]

Umbal also said that petitioners arrived with Bato and conducted a mock interrogation of Van Twest who thereafter signed various documents upon being compelled to do so.[38] During the clarificatory questioning, however, Umbal changed his story and said that he was asked to go outside of the "safe house" at the time Van Twest was interrogated and thus did not see if Van Twest indeed signed certain documents. Why Umbal had to be sent out of the "safe house," no explanation was offered. Did these documents really exist? Or could the non-existence of these documents be the reason why PACC was not able to comply with the order of the prosecutors to produce them during the preliminary investigation? And then, what happened to the P2.5M that was supposedly offered by petitioners in exchange for the abduction of Van Twest? These and more remain unanswered.

Most perplexing however is that while the whole investigation was supposedly triggered off by Umbal's confession of 16 September 1993, the application of the PACC operatives for a search warrant to be served in the two (2) dwellings of Santiago was filed and granted by the Regional Trial Court of Manila on 15 September 1993, a day before Umbal executed his sworn statement. In support of the application, the PACC agents claimed that Umbal had been in their custody since 10 September 1993. Significantly, although he was said to be already under their custody, Umbal claims he was never interrogated until 16 September 1993 and only at the security barracks of Valle Verde V, Pasig, where he was a security guard.[39]

The alleged counter-affidavit of SPO2 Bato, which the panel of prosecutors also considered in filing the charges against petitioners, can hardly be credited as its probative value has tremendously waned. The records show that the alleged counter-affidavit, which is self-incriminating, was filed after the panel had considered the case submitted for resolution. And before petitioners could refute this counter-affidavit, Bato moved to suppress the same on the ground that it was extracted through duress and intimidation.

For sure, the credibility of Umbal is badly battered. Certainly, his bare allegations, even if the State invokes its inherent right to prosecute, are insufficient to justify sending two lawyers to jail, or anybody for that matter. More importantly, the PACC operatives who applied for a warrant to search the dwellings of Santiago never implicated petitioners. In fact they claimed that according to Umbal, it was Santiago, and not petitioners, who masterminded the whole affair.[40] While there may be bits of evidence against petitioners' co-accused, i.e., referring to those seized from the dwellings of Santiago, these do not in the least prove petitioners' complicity in the crime charged. Based on the evidence thus far submitted there is nothing indeed, much less is there probable cause, to incriminate petitioners. For them to stand trial and be deprived in the meantime of their liberty, however brief, the law appropriately exacts much more to sustain a warrant for their arrest – facts and circumstances strong enough in themselves to support the belief that they are guilty of a crime that in fact happened. Quite obviously, this has not been met.

Verily, respondent judge committed grave abuse of discretion in issuing the warrant for the arrest of petitioners it appearing that he did not personally examine the evidence nor did he call for the complainant and his witnesses in the face of their incredible accounts. Instead, he merely relied on the certification of the prosecutors that probable cause existed. For, otherwise, he would have found out that the evidence thus far presented was utterly insufficient to warrant the arrest of petitioners. In this regard, we restate the procedure we outlined in various cases we have already decided.

In *Soliven v. Makasiar*,[41] we said that the judge (a) shall personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or, (b) if on the basis thereof he finds no probable cause, may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion on the existence of probable cause.

In *People v. Inting*,[42] we emphasized the important features of the constitutional mandate: (a) The determination of probable cause is a function of the judge; it is not for the provincial fiscal or prosecutor to ascertain. Only the judge and the judge alone makes this determination; (b) The preliminary inquiry made by a prosecutor does not bind the judge. It merely assists him in making the determination of probable cause. The judge does not have to follow what the prosecutor presents to him. By itself, the prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcript of stenographic notes (if any), and all other supporting documents behind the prosecutor's certification which are material in assisting the judge in his determination of probable cause; and, (c) Judges and prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper

which ascertains whether the offender should be held for trial or released. Even if the two inquiries be conducted in the course of one and the same proceeding, there should be no confusion about their objectives. The determination of probable cause for the warrant is made by the judge. The preliminary investigation proper - whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial - is a function of the prosecutor.

In *Lim v. Felix*,^[43] where we reiterated *Soliven v. Makasiar* and *People v. Inting*, we said -

[T]he Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. However, there should be a report and necessary documents supporting the Fiscal's bare certification. All these should be before the Judge.

The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be sure, the judge must go beyond the Prosecutor's certification and investigation report whenever necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.

Clearly, probable cause may not be established simply by showing that a trial judge subjectively believes that he has good grounds for his action. Good faith is not enough. If subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be "secure in their persons, houses, papers and effects" only in the fallible discretion of the judge.^[44] On the contrary, the probable cause test is an objective one, for in order that there be probable cause the facts and circumstances must be such as would warrant a belief by a reasonably discreet and prudent man that the accused is guilty of the crime which has just been committed.^[45] This, as we said, is the standard. Hence, if upon the filing of the information in court the trial judge, after reviewing the information and the documents attached thereto, finds that no probable cause exists must either call for the complainant and the witnesses themselves or simply dismiss the case. There is no reason to hold the accused for trial and further expose him to an open and public accusation of the crime when no probable cause exists.

But then, it appears in the instant case that the prosecutors have similarly misappropriated, if not abused, their discretion. If they really believed that petitioners were probably guilty, they should have armed themselves with facts and circumstances in support of that belief; for mere belief is not enough. They should have presented sufficient and credible evidence to demonstrate the existence of probable cause. For the prosecuting officer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."^[46]

In the case at bench, the undue haste in the filing of the information and the inordinate interest of the government cannot be ignored. From the gathering of evidence until the termination of the preliminary investigation, it appears that the state prosecutors were overly eager to file the case and secure a warrant for the arrest of the accused without bail and their consequent detention. Umbal's sworn statement is laden with inconsistencies and

improbabilities. Bato's counter-affidavit was considered without giving petitioners the opportunity to refute the same. The PACC which gathered the evidence appears to have had a hand in the determination of probable cause in the preliminary inquiry as the undated resolution of the panel not only bears the letterhead of PACC but was also recommended for approval by the head of the PACC Task Force. Then petitioners were given the runaround in securing a copy of the resolution and the information against them.

Indeed, the task of ridding society of criminals and misfits and sending them to jail in the hope that they will in the future reform and be productive members of the community rests both on the judiciousness of judges and the prudence of prosecutors. And, whether it is a preliminary investigation by the prosecutor, which ascertains if the respondent should be held for trial, or a preliminary inquiry by the trial judge which determines if an arrest warrant should issue, the bottomline is that there is a standard in the determination of the existence of probable cause, i.e., there should be facts and circumstances sufficiently strong in themselves to warrant a prudent and cautious man to believe that the accused is guilty of the crime with which he is charged. Judges and prosecutors are not off on a frolic of their own, but rather engaged in a delicate legal duty defined by law and jurisprudence.

In this instance, *Salonga v. Paño*[47] finds application -

The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trial (*Trocio v. Manta*, 118 SCRA 241, citing *Hashim v. Boncan*, 71 Phil. 216). The right to a preliminary investigation is a statutory grant, and to withhold it would be to transgress constitutional due process (see *People v. Oandasa*, 25 SCRA 277). However, in order to satisfy the due process clause it is not enough that the preliminary investigation is conducted in the sense of making sure that the transgressor shall not escape with impunity. A preliminary investigation serves not only for the purposes of the State. More importantly, it is a part of the guarantees of freedom and fair play which are birthrights of all who live in the country. It is therefore imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going thru a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused (underscoring supplied).

The facts of this case are fatefully distressing as they showcase the seeming immensity of government power which when unchecked becomes tyrannical and oppressive. Hence the Constitution, particularly the Bill of Rights, defines the limits beyond which lie unsanctioned state actions. But on occasion, for one reason or another, the State transcends this parameter. In consequence, individual liberty unnecessarily suffers. The case before us, if uncurbed, can be illustrative of a dismal trend. Needless injury of the sort inflicted by government agents is not reflective of responsible government. Judges and law enforcers are not, by reason of their high and prestigious office, relieved of the common obligation to avoid deliberately inflicting unnecessary injury.

The sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law. This is essential for its self-preservation, nay, its very existence. But this does not confer a license for pointless assaults on its citizens. The right of the State to prosecute not a carte blanche for government agents to defy and disregard the rights of its citizens under the Constitution. Confinement, regardless of duration, is too high a price to pay for reckless and impulsive prosecution. Hence, even if we apply in this case the "multifactor balancing test" which requires the officer to weigh the manner and intensity of the interference on the right of the people, the gravity of the crime committed and the circumstances attending the incident, still we cannot see probable cause to order the detention of petitioners.[48]

The purpose of the Bill of Rights is to protect the people against arbitrary and discriminatory use of political

power. This bundle of rights guarantees the preservation of our natural rights which include personal liberty and security against invasion by the government or any of its branches or instrumentalities. Certainly, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former. Thus, relief may be availed of to stop the purported enforcement of criminal law where it is necessary to provide for an orderly administration of justice, to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights.[49]

Perhaps, this case would not have reached this Court if petitioners were ordinary people submissive to the dictates of government. They would have been illegally arrested and detained without bail. Then we would not have the opportunity to rectify the injustice. Fortunately, the victims of injustice are lawyers who are vigilant of their rights, who fight for their liberty and freedom not otherwise available to those who cower in fear and subjection.

Let this then be a constant reminder to judges, prosecutors and other government agents tasked with the enforcement of the law that in the performance of their duties they must act with circumspection, lest their thoughtless ways, methods and practices cause a disservice to their office and maim their countrymen they are sworn to serve and protect. We thus caution government agents, particularly the law enforcers, to be more prudent in the prosecution of cases and not to be oblivious of human rights protected by the fundamental law. While we greatly applaud their determined efforts to weed society of felons, let not their impetuous eagerness violate constitutional precepts which circumscribe the structure of a civilized community.

WHEREFORE, the petition for certiorari and prohibition is GRANTED. The temporary restraining order we issued on 28 February 1994 in favor of petitioners, Atty. Diosdado Jose Allado and Atty. Roberto L. Mendoza, is made permanent. The warrant of arrest issued against them is SET ASIDE and respondent Judge Roberto C. Diokno is ENJOINED from proceeding any further against herein petitioners in Crim. Case No. 94-1757 of the Regional Trial Court of Makati.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Salonga v. Paño, G.R. No. 59524, 18 February 1985, 134 SCRA 438, 443.

[2] Rollo, pp. 52-54.

[3] Id., pp. 55-56.

[4] Id., pp. 40-42.

[5] Id., pp. 43-45.

[6] Id., pp. 60-63.

[7] Motion for Production of Documents, alternatively, for Subpoena Duces Tecum, pp. 3-4.

[8] Rollo, pp. 64-65.

[9] Id., pp. 69-88; 166-181.

[10] Id., pp. 252-253.

[11] Id., pp. 254-261.

- [12] Id., pp. 292-296.
- [13] Id., pp. 276-291.
- [14] Id., pp. 297-299.
- [15] Id., pp. 300-322.
- [16] Id., pp. 323-325.
- [17] Ibid.
- [18] Id., pp. 326-330.
- [19] Rollo, p. 333.
- [20] Petition for Certiorari, p. 22; Rollo, p. 23.
- [21] Ibid.
- [22] Ibid.
- [23] 32 Phil. 363 (1915).
- [24] Que v. Intermediate Appellate Court, G.R. No. 66865, 13 January 1989, 169 SCRA 1989; Ponce v. Legaspi, G.R. No. 79184, 6 May 1992, 208 SCRA 377; and Albenson v. Court of Appeals, G.R. No. 88694, 11 January 1993, 217 SCRA 16.
- [25] See Bernas, The Constitution of the Republic of the Philippines. A Commentary. Vol. 1, First Ed., 1987, pp. 86-87.
- [26] 34 Words and Phrases 15, citing Mudge v. State, 45 N.Y.S. 2d 296, 901.
- [27] G.R. No. 101978, 7 April 1993, 221 SCRA 349.
- [28] Id., pp. 360-361.
- [29] TSN of the Preliminary Investigation conducted by the State Prosecutors, 26 November 1993, pp. 34-35; Rollo, pp. 218- 219.
- [30] See Abbey Land v. County of San Mateo, 167 Cal 434, 139 P 1068.
- [31] TSN of the Hearing before the First Division, Supreme Court, 28 February 1994, pp. 21-23.
- [32] Rollo, pp. 189-190.
- [33] TSN of the Hearing before the First Division, Supreme Court, 28 February 1994, p. 18.
- [34] Sec. 16, Rule 3, of the Revised Rules of Court.
- [35] 1 Phil. 239 (1902).
- [36] Sworn Statement of Escolastico Umbal, p. 1; Rollo, p. 52.
- [37] TSN of Preliminary Investigation conducted by State Prosecutors, 26 November 1993, pp. 38-39; Rollo, pp. 222-223.
- [38] Sworn Statement of Escolastico Umbal, p. 2; Rollo, p. 53.

[39] TSN of Preliminary Investigation conducted by State Prosecutors, 26 November 1993, pp. 48-49; Rollo, pp. 232-233.

[40] TSN of the Proceedings for the application of search warrant before Judge Roberto Barrios, 15 September 1993, pp. 16, 21; Rollo, pp. 104, 109.

[41] G.R. Nos. 82585, 82827 and 83979, 14 November 1988, 167 SCRA 393.

[42] G.R. No. 88919, 25 July 1990, 187 SCRA 788.

[43] G.R. Nos. 92466-69, 19 February 1991, 187 SCRA 292.

[44] *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d. 142 (1964).

[45] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d. 889 (1968).

[46] *Suarez v. Judge Platon*, 69 Phil. 556, 564-565 (1940), citing Mr. Justice Sutherland of the Supreme Court of the United States.

[47] See Note 1.

[48] See Alschuler, *Bright Line Fever and the Fourth Amendment*, 45 U. Pitt. L. Rev. 227, 243-56 (1984); Grano, *Probable Cause and Common Sense: A Reply to the Critics of Illinois v. Gates*, 17 U. Mich J. L. Ref. 465, 501-06 (1984).

[49] *Hernandez v. Albano*, No. L-19272, 25 January 1967, 19 SCRA 95.

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