

**PEOPLE OF THE PHILIPPINES AND ALYNN PLEZETTE DY,
PETITIONERS, VS. COURT OF APPEALS, BILLY CERBO AND
JONATHAN CERBO, RESPONDENTS.**

G.R. No. 126005. January 21, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In our criminal justice system, the public prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. Courts must respect the exercise of such discretion when the information filed against the accused is valid on its face, and no manifest error, grave abuse of discretion or prejudice can be imputed to the public prosecutor.

The Case

Before us is a Petition for Review under Rule 45, seeking to reverse the June 28, 1996 Decision and the August 27, 1996 Resolution of the Court of Appeals[1] in CA- GR SP No. 36018.[2] The assailed Decision dismissed the Petition for Certiorari filed by the petitioners, which sought to annul and set aside two Orders of the Regional Trial Court of Nabunturan, Davao: the June 28, 1994 Order dismissing the Information for murder filed against Private Respondent Billy Cerbo and the August 18, 1994 Order denying petitioners' motion for reconsideration.

The assailed August 27, 1996 Court of Appeals (CA) Resolution likewise denied petitioners' motion for reconsideration.

The Facts

The case below arose from the fatal shooting of Petitioner Dy's mother, Rosalinda Dy, in which the primary suspect was Private Respondent Jonathan Cerbo, son of Private Respondent Billy Cerbo.

The procedural and factual antecedents of the case were summarized in the challenged Decision of the Court of Appeals as follows:

"On August 30, 1993, Rosalinda Dy, according to the petition, was shot at pointblank range by private respondent Jonathan Cerbo in the presence and at the office of his father, private respondent Billy Cerbo at Purok 9, Poblacion, Nabunturan, Davao.

"On September 2, 1993, eyewitness Elsa B. Gumban executed an affidavit positively identifying private respondent Jonathan Cerbo as the assailant. (Annex C, Rollo, p. 34).

"On September 20, 1993, private respondents Jonathan Cerbo executed a counter-affidavit interposing the defense that the shooting was accidental (Annex D: Rollo, pp. 35-36).

"On October 6, 1993, the 3rd Municipal Circuit Trial Court of Nabunturan-Mawab, Davao, after a preliminary investigation, found "sufficient ground to engender a well-founded belief" that the crime of murder has been committed by private respondent Jonathan Cerbo and resolved to forward the entire records of the case to the provincial prosecutor at Tagum, Davao (Annex E, Rollo, pp. 37-38).

“After [an] information for murder was filed against Jonathan Cerbo, petitioner Alynn Plezette Dy, daughter of the victim Rosalinda Dy, executed an affidavit-complaint charging private respondent Billy Cerbo of conspiracy in the killing (Annex F, Rollo, p. 39), supported by a supplemental affidavit of Elsa B. Gumban, alleging “in addition” to her previous statement that:

‘3. In addition to my said sworn statement, I voluntarily and freely aver as follows:

‘a) I vividly recall that while my mistress Rosalinda Go and I were in the office of Billy Cerbo at about 11:45 a.m. on August 30, 1993, Mr. Cerbo personally instructed me to fetch the food from the kitchen [and to bring it] to the office instead of the dining room.

‘b) While bringing the food, Mr. Cerbo again instructed me to place the food [o]n a corner table and commanded me to sit behind the entrance door and at the same time Mr. Cerbo positioned Rosalinda [on] a chair facing the entrance door for an easy target.

‘c) Immediately after Rosalinda was shot, Mr. Billy Cerbo called his son Jonathan who was running, but did not and ha[s] never bothered to bring Rosalinda to a hospital or even apply first aid.

‘d) To my surprise, Mr. Billy Cerbo, instead of bringing Rosalinda to the hospital, brought her to the funeral parlor and immediately ordered her to be embalmed without even informing her children or any of her immediate relatives xxx.’ Annex G, Rollo, p. 40.)

“Private respondent Billy Cerbo Submitted a counter-affidavit denying the allegations of both petitioner Alynn Plezette Dy and Elsa B. Gumban (Annex H, Rollo, pp. 41-42).

“On or about April 8, 1994, Prosecutor Protacio Lumangtad filed a “Motion for leave of court to reinvestigate the case” (Annex I. Rollo, pp43-44) which was granted by the respondent judge in an order dated April 28, 1994 (Annex J, Rollo, p. 45).

“In his resolution dated May 5, 1994, Prosecutor Lumangtad recommended the filing of an amended information including Billy Cerbo ‘xxx as one of the accused in the murder case xxx’ (Annex K: rollo, pp. 46-49).

“Accordingly, the prosecution filed an amended information including Billy Cerbo in the murder case. A warrant for his arrest was later issued on May 27, 1994 (Rollo, p. 27).

“Private respondent Billy Cerbo then filed a motion to quash warrant of arrest arguing that the same was issued without probable cause (Rollo, p. 27).

“On June 28, 1994, respondent Judge issued the first assailed order dismissing the case against Billy Cerbo and recalling the warrant for his arrest[;] the dispositive portion of [the order] reads:

‘IN THE LIGHT OF ALL THE FOREGOING, [an] order is hereby issued DISMISSING the case as against Billy Cerbo only.’

‘Let, therefore, the warrant of arrest, dated may 27, 1994, be RECALLED.

‘The prosecution is hereby ordered to withdraw its Amended Information and file a new one charging Jonathan Cerbo only.

‘SO ORDERED.’ (Rollo, pp. 29-30).

“Private Prosecutor Romeo Tagra filed a motion for reconsideration which was denied by the respondent judge in his second assailed order dated August 18, 1994 (Annex B, Rollo, pp. 31-33).”[3]

The Ruling of the Court of Appeals

In its 10-page Decision, the Court of Appeals debunked petitioners’ assertion that the trial judge committed grave

abuse of discretion in recalling the warrant of arrest and subsequently dismissing the case against Billy Cerbo, Citing jurisprudence,[4] the appellate court held as follows:

“The ruling is explicit. 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 exist must either call for the complainant and the witnesses or simply dismiss the case.

“Petitioners question the applicability of the doctrine laid down in the above[-]mentioned case, alleging that the facts therein are different from the instant case. We rule that the disparity of facts does not prevent the application of the principle.

“We have gone over the supplemental affidavit of Elsa B. Gumban and taking into account the additional facts and circumstance alleged therein, we cannot say that respondent judge gravely abused his discretion in dismissing the case as against private respondent Billy Cerbo for lack of probable cause

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“The prosecution, if it really believed that Billy Cerbo is probably guilty by conspiracy, should have presented additional evidence sufficiently and credibly demonstrating the existence of probable cause.

xxx xxx xxx[5]

In sum, the Court of Appeals held that Judge Eugenio Valles did not commit grave abuse of discretion in recalling the warrant of arrest issued against Private Respondent Billy Cerbo and subsequently dismissing the Information for murder filed against the private respondent, because the evidence presented thus far did not substantiate such charge.

Hence, this petition.[6]

The Assigned Errors
Petitioner Dy avers:

“1) The Court of Appeals gravely erred in holding that the Regional Trial Court Judge had the authority to reverse [the public prosecutor’s] finding of probable cause to prosecute accused xxx and thus dismiss the case filed by the latter on the basis of a motion to quash warrant of arrest.

“2) The Court of Appeals gravely erred in fully and unqualifiedly applying the case of Allado, et. al. vs. PACC, et. al. G.R. No. 113630, [to] the case at bench despite [the] clear difference in their respective factual backdrop[s] and the contrary earlier jurisprudence on the matter.”[7]

On the other hand, the solicitor general posits this sole issue:

“Whether the Court of Appeals erred in finding that no probable cause exists to merit the filing of charges against private respondents Billy Cerbo.”[8]

Essentially, the petitioners are questioning the propriety of the trial court’s dismissal, for want of evidence, of the Information for murder against Private Respondent Billy Cerbo.

In resolving this petition, the discussion of the Court will revolve two points: first, the determination of probable cause as an executive and judicial function and, second, the applicability of Allado and Salonga to the case at bar.

The Court’s Ruling

The petition is meritorious. The trial court erred in dismissing the Information filed against the private respondent. Consequently, the Court of Appeals was likewise in error when it upheld such ruling.

Executive Determination

of Probable Cause

The determination of probable cause during a preliminary investigation is a function that belongs to the public prosecutor. It is an executive function,[9] the correctness of the exercise of which is a matter that the trial court itself does not and may not be compelled to pass upon. The Separate (Concurring) Opinion of former Chief Justice Andres R. Narvasa in *Roberts v. Court of Appeals*[10] succinctly elucidates such point in this wise:

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“In this special civil action, this Court is being asked to assume the function of a public prosecutor. It is being asked to determine whether probable cause exists as regards petitioners. More concretely, the Court is being asked to examine and assess such evidence as has thus far been submitted by the parties and, on the basis thereof, make a conclusion as to whether or not it suffices ‘to engender a well founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.

“It is a function that this Court should not be called upon to perform. It is a function that properly pertains to the public prosecutor, one that, as far as crimes cognizable by a Regional Trial Court are concerned, and notwithstanding that it involves an adjudicative process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. It is moreover a function that in the established scheme of things, is supposed to be performed at the very genesis of, indeed, prefatorily to, the formal commencement of a criminal action. The proceedings before a public prosecutor, it may well be stressed, are essentially preliminary, prefatory and cannot lead to a final, definite and authoritative adjudgment of the guilt or innocence of the persons charged with a felony or crime.

“Whether or not that function has been correctly discharged by the public prosecutor – i. e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon. It is not for instance permitted for an accused, upon the filing of the information against him by the public prosecutor, to preempt trial by filing a motion with the Trial Court praying for the quashal or dismissal of the indictment on the ground that the evidence upon which the same is based is inadequate. Nor is it permitted, on the antipodal theory that the evidence is in truth inadequate, for the complaining party to present a petition before the Court praying that the public prosecutor be compelled to file the corresponding information against the accused.

xxx xxx xxx”

Indeed, the public prosecutor has broad discretion to determine whether probable cause exist and to charge those whom be or she believes to have committed the crime as defined by law. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court.[11] Thus, in *Crespo v. Mogul*,[12] we ruled:

“It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. The institution of a criminal action depends upon the sound discretion of the fiscal. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecutions by private persons. xxx Prosecuting officers under the power vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the duty not to prosecute when the evidence adduced is not sufficient to establish a prima facie case.”

This broad prosecutorial power is however not unfettered, because just as public prosecutors are obliged to bring forth before the law those who have transgressed it, they are also constrained to be circumspect in filing criminal

charges against the innocent. Thus, for crimes cognizable by regional trial courts preliminary investigations are usually conducted. In *Ledesma v. Court of Appeals*,^[13] we discussed the purposes and nature of a preliminary investigation in this manner:

“The primary objective of a preliminary investigation is to free respondent from the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt in a more or less summary proceeding by a competent office designated by law for that purpose. Secondly, such summary proceeding also protects the state from the burden of the unnecessary expense and effort in prosecuting alleged offenses and in holding trials arising from false, frivolous or groundless charges.

“Such investigation is not part of the trial. A full and exhaustive presentation of the parties’ evidence is not required, but only such as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. By reason of the abbreviated nature of preliminary investigations, a dismissal of the charges as a result thereof is not equivalent to a judicial pronouncement of acquittal. Hence, no double jeopardy attaches.”

Judicial Determination of Probable Cause

The determination of probable cause to hold a person for trial must be distinguished from the determination of probable cause to issue a warrant of arrest, which is judicial function. The judicial determination of probable cause in the issuance of arrest warrants has been emphasized in numerous cases. In *Ho v. People*,^[14] the Court summarized the pertinent rulings on the subject, as follows:

“The above rulings in *Soliven*, *Inting* and *Lim, Sr.* were iterated in *Allado v. Diokno*, where we explained again what probable cause means. Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. Hence, the judge, before issuing a warrant of arrest, “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.” At this stage of the criminal proceeding, the judge is not yet tasked to review in detail the evidence submitted during the preliminary investigation. It is sufficient that he personally evaluates such evidence in determining probable cause. In *Webb v. De Leon*, we stressed that the judge merely determines the probability, not the certainty, of guilt of the accused and, in doing so, he need not conduct a *de novo* hearing. He simply personally reviews the prosecutor’s initial determination finding probable cause to see if it is supported by substantial evidence.

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“In light of the aforecited decisions of this Court, such justification cannot be upheld. Lest we be too repetitive, we only emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for the purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e., whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceedings or evidence, there should be no confusion as to their distinct objectives.

“Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor’s report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide independently. Hence, he must have

supporting evidence, other than the prosecutor's bare report upon which to legally sustain his own findings on the existence or non-existence of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or non-existence of probable cause is lodge in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

"Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of the accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcript of stenographic notes, if any) upon which to make his independent judgment, or at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as the Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his duties and functions which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.

xxx xxx xxx"

Verily, a judge cannot be compelled to issue a warrant of arrest if he or she deems that there is no probable cause for doing so. Corollary to this principle, the judge should not override the public prosecutor's determination of probable cause to hold an accused for trial, on the ground that the evidence presented to substantiate the issuance of an arrest warrant insufficient, as in the present case.

Indeed, it would be unfair to expect the prosecution to present all the evidence needed to secure the conviction of the accused upon the filing of the information against the latter. The reason is found in the nature and the objective of a preliminary investigation. Here, the public prosecutors do not decide whether there is evidence beyond reasonable doubt of the guilt of the person charged; they merely determine "whether there is sufficient ground to engender a well-founded belief that a crime x x x has been committed and that the respondent is probably guilty thereof, and should be held for trial." [15] Evidentiary matters must be presented and heard during the trial. [16] Therefore, if the information is valid on its face, and there is no showing of manifest error, grave abuse of discretion and prejudice on the part of public prosecutor, the trial court should respect such determination.

Inapplicability of Allado and Salonga

The Court of Appeals anchored its ruling on the pronouncement made in *Allado v. Diokno*: "xxx [I]f, upon the filing of the information in court, the trial judge, after reviewing the information and the documents attached thereto, 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." [17]

In *Allado*, Petitioners Diosdado Jose Allado and Roberto L. Mendoza, practicing lawyers, were accused by the Presidential Anti-Crime Commission (PACC) of kidnapping with murder and ordered by Judge Roberto C. Diokno to be arrested without bail. The petitioners questioned the issuance of the warrants for their arrest, contending that the respondents judge acted with grave abuse of discretion and in excess of his jurisdiction in

holding that there was probable cause against them. They contended that the trial court relied merely on the resolution of the investigating panel and its certification that probable cause existed, without personally determining the admissibility and sufficiency of the evidence for such finding and without stating the basis thereof. They maintained that the records of the preliminary investigation, which was the sole basis of the judge's ruling, failed to establish probable cause against them that would justify the issuance of the warrants for their arrest.

The Court declared that Judge Diokno had indeed committed grave abuse of discretion in issuing the arrest warrants. Contrary to the constitutional mandate and established jurisprudence, he merely relied on the certification of the prosecutors as to the existence of probable cause, instead of personally examining the evidence, the complainant and his witnesses. "For otherwise," the Court said, "he would have found out that the evidence thus far presented was utterly insufficient to warrant the arrest of the petitioners." [18]

In categorically stating that the evidence so far presented did not meet the standard of probable cause and subsequently granting the petition, the Court noted the following circumstances: first, the corpus delicti was not established, and there was serious doubt as to the alleged victim's death; second, the extrajudicial statement of the principal witness, who had priorly confessed his participation in the crime, was full of material inconsistencies; and third, the PACC operatives who investigated the case never implicated the petitioners.

Citing *Salonga v. Cruz-Paño*, the Court of Appeals pointed out that when there was no prima facie case against a person sought to be charged with a crime, "the judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn out during trial, for this would be a flagrant violation of a basic right which the courts are created to uphold." [19]

In the aforecited case, Petitioner Jovito R. Salonga sought to bar the filing of an Information for violation of the Revised Anti-Subversion Act, which Judge Ernani Cruz-Pano had ordered to be filed against him. In sustaining the petitioner, the Court held that the evidence upon which the Information was based was not sufficient to charge him for a violation of the Revised Anti-Subversion Act.

In all, the Court decreed in both cases that there was no basis in law and in fact for the judicial and executive determination of probable cause. The Court also held that the government, while vested with the right and the duty to protect itself and its people against transgressors of the law, must perform the same in a manner that would not infringe the perceived violators' rights as guaranteed by the constitution.

However, the present case is not at all fours with *Allado* and *Salonga*. First, Elsa Gumban, the principal eyewitness to the killing of Rosalinda Dy, was not a participant or conspirator in the commission of said crime. In *Allado* and *Salonga*, however, the main witness were the confessed perpetrators of the crimes, whose testimonies the Court deemed 'tainted'. [20] Second, in the case at bar the private respondent was accorded due process, and no precipitate haste or bias during the investigation of the case can be imputed to the public prosecutor. On the other hand, the Court noted in *Allado* the "undue haste in the filing of the Information and the inordinate interest of the government" in pursuing the case; [21] and in *Salonga*, "xxx the failure of the prosecution to show that the petitioner was probably guilty of conspiring to commit the crime, the initial disregard of petitioner's constitutional rights [and] the massive and damaging publicity made against him." [22] In other words, while the respective sets of evidence before the prosecutors in *Allado* and *Salonga* were "utterly insufficient" to support a finding of probable cause, the same cannot be said of the present case.

We stress that *Allado* and *Salonga* constitute exceptions to the general rule and may be invoked only if similar circumstances are clearly shown to exist. But as the foregoing comparisons show, such similarities are absent in the instant case. Hence, the rulings in the two aforementioned cases cannot apply to it.

Motion Without Requisite Notice

One more thing. Petitioners aver that Private Respondents Cerbo did not give them a copy of the motion to Quash the Warrant of Arrest, which had been issued against him, or a notice of the schedule hearing. Thus, they contend, Judge Valles should not have entertained such motion.

It is settled that every written motion in a trial court must be set for hearing by the applicant and served with the notice of hearing thereof, in such a manner as to ensure its receipt by the other party. The provisions on this matter in Sections 4 and 5, Rule 15 of the Rules of Court,[23] are categorical and mandatory in character.[24] Under Section 6 of the said rule, no motion shall be acted upon by the court without proof of service thereof. The rationale for this is simple: unless the movants set the time and the place of hearing, the court will be unable to determine whether the adverse parties agree or object to the motions, since the rules themselves do not fix any period within which they may file their replies or oppositions.[25]

The motion to quash the warrant of arrest in the present case being pro forma, inasmuch as the requisite copy and notice were not duly served upon the adverse party, the trial court had no authority to act on it.

Epilogue

In granting this petition, we are not prejudging the criminal case or guilt or innocence of Private Respondent Billy Cerbo. We are simply saying that, as a general rule, if the information is valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the public prosecutor, courts should not dismiss it for ‘want of evidence,’ because evidentiary matters should be presented and heard during the trial. The functions and duties of both the trial court and the public prosecutor in “the proper scheme of things” in our criminal justice system should be clearly understood.

The rights of the people from what could sometimes be an “oppressive exercise of government prosecutorial powers do need to be protected when circumstance so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process. Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor’s duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties.

In any case, if there was palpable error or grave abuse of discretion in the public prosecutor’s finding of probable cause, the accused can appeal such finding to the justice secretary[26] and move for the deferment or suspension of the proceedings until such appeal is resolved.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals is hereby REVERSED and SET ASIDE. The case is REMANDED to the Regional Trial Court of Nabunturan, Davao, which is ordered to reinstate the amended Information against Private Respondent Billy Cerbo and to proceed with judicious speed in hearing the case. No costs.

SO ORDERED.

Romero (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Seventh Division composed of Justices Eduardo G. Montenegro, ponente; concurred in by Emeterio C. Cui, chairman of the Division, and Jose C. dela Rama.

[2] Entitled “People of the Philippines and Alynn Plezette Dy v. Hon. Eugenio Valles, Judge, RTC Branch 3, Nabunturan, Davao, Jonathan Cerbo and Billy Cerbo.”

[3] CA Decision, pp. 1-5; rollo, pp. 27-31.

[4] Allado v. Diokno, 232 SCRA 192, May 5, 1994; and Salonga v Cruz Paño, 134 SCRA 438, February 18, 1985.

[5] CA Decision, pp. 8-9; rollo, pp. 34-35.

[6] The case was deemed submitted for decision on August 25, 1998, upon receipt by this Court of private respondents' Memorandum.

[7] Petition, p. 7; rollo, p. 15.

[8] Comment of the Office of the Solicitor General, p. 4; rollo, p. 80.

[9] Ledesma v Court of Appeals, 278 SCRA 657, September 5, 1997.

[10] 254 SCRA 307, 349, March 5, 1996. *Italics supplied.*

[11] Paderanga v. Drilon, G.R No. 96080, April 19, 1991.

[12] 151 SCRA 462, June 30, 1987, per Gancayco, J.

[13] Ledesma, *supra* per Panganiban, J., at pp. 673-674.

[14] 280 SCRA 365, October 9, 1997. Per Panganiban J. *Italics supplied.*

[15] Section 1, Rule 112, Rules of Court.

[16] See Pilapil v Sandiganbayan, 221 SCRA 349, April 7, 1993 (per Nocon, J.), which held that:

"We agree with respondent court that the presence or absence of the elements of the crime are evidentiary in nature and are matters of defense, the truth of which can best be passed upon after a full-blown trial on the merits.

"Probable cause has been defined in the leading case of *Buchanan v. Vda. De Esteban*, 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.

"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 as to 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 the evidence of the prosecution in support of the charge." *Italics supplied.*
Citations omitted.

[17] CA Decision, pp. 6-7; rollo, pp. 52-53.

[18] Allado, at p. 205.

[19] See CA Decision, p. 8; rollo, p. 34.

[20] In Allado, the petitioners were identified as the masterminds in the alleged kidnapping and murder of one Eugene Alexander Van Twest, a German national. They were charged primarily on the basis of the Sworn Statement of one Escolastico Umbal, who had confessed his participation in the crime.

In *Salonga, Victor Burns Lovely, Jr.*, a Philippine-born American citizen allegedly confessed, after his apprehension for a bombing incident his participation therein and implicated former Senator Jovito Salonga in the series of bombings that had plagued Metro Manila in 1980. However, after returning to the United States, Lovely denied any participation in the bombing.

[21] Allado, at p. 207.

[22] Salonga, at p. 448.

[23] "Section 4. Hearing of motion. Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be for hearing by the applicant.

"Every written motion required to be heard [as well as] the notice of hearing shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good reason the hearing on shorter notice.

"Section 5. Notice of hearing. The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion."

[24] *Tan v. Court of Appeals and Bloomberry Export Manufacturing, Inc.*, GR no. 130314, September 22, 1998.

[25] See *People v. Court of Appeals et. al.*, GR No. 125164, September 25, 1998.

[26] See Republic Act 5180, as amended, as well as Section 4 of Department of Justice Circular No. 223, dated June 30, 1993, which reads as follows:

"Section 4. Non-appealable cases; Exceptions. No appeal may be taken from a Resolution of the Chief State Prosecutor/Regional State Prosecutor/Provincial or City Prosecutor finding probable cause except upon showing of manifest error or grave abuse of discretion. Notwithstanding the showing of manifest error or grave abuse of discretion, no appeal shall be entertained where the appellant had already been arraigned. If the appellant is arraigned during the pendency of the appeal, said appeal shall be dismissed *motu proprio* by the Secretary of Justice.

"An appeal/motion for reinvestigation from a resolution finding probable cause, however, shall not hold the filing of the information in court." (Italics supplied.)

On October 17, 1995, DOJ Order 233 was amended, but the scope of appealable cases remained unchanged. See also *Marcelo v. Court of Appeals*, 235 SCRA 39, August 4, 1994.

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