

**PETER PAUL DIMATULAC AND VERONICA DIMATULAC,
PETITIONERS, VS. HON. SESINANDO VILLON IN HIS CAPACITY AS
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PAMPANGA,
BRANCH 54; HON. ...**

G.R. No. 127107. October 12, 1998

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-127107/>

DAVIDE, JR., J.:

The issues raised by petitioners in their Memorandum[1] and by the Office of the Solicitor General in its Comment[2] in this special civil action for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court filed by petitioners, children of the deceased Police Officer 3 (PO3) Virgilio Dimatulac of Masantol, Pampanga, may be summarized as follows:

A. WHETHER THE OFFICE OF THE PROVINCIAL PROSECUTOR COMMITTED GRAVE ABUSE OF DISCRETION IN: (1) GIVING DUE COURSE TO THE MOTION FOR REINVESTIGATION BY PRIVATE RESPONDENTS AGAINST WHOM WARRANTS OF ARREST WERE ISSUED BUT WHO HAD NOT YET BEEN BROUGHT INTO THE CUSTODY OF THE LAW; and (2) FILING THE INFORMATION FOR HOMICIDE DESPITE KNOWLEDGE OF THE APPEAL FROM SAID PROSECUTOR'S RESOLUTION TO THE OFFICE OF THE SECRETARY OF JUSTICE.

B. WHETHER PUBLIC RESPONDENT JUDGE ACTED IN EXCESS OF JURISDICTION IN PROCEEDING WITH THE ARRAIGNMENT AND IN DENYING PETITIONERS' MOTIONS TO SET ASIDE ARRAIGNMENT AND RECONSIDERATION THEREOF DESPITE HIS KNOWLEDGE OF THE PENDENCY OF THE APPEAL AND THE SUBMISSION OF VITAL EVIDENCE TO PROVE THAT MURDER AND NOT HOMICIDE WAS COMMITTED BY THE ACCUSED.

C. WHETHER PUBLIC RESPONDENT SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION IN RECONSIDERING HIS ORDER FINDING THAT THE CRIME COMMITTED WAS MURDER AND DIRECTING THE PROVINCIAL PROSECUTOR TO AMEND THE INFORMATION FROM HOMICIDE TO MURDER.

The records and the pleadings of the parties disclose the antecedents.

On 3 November 1995, SPO3 Virgilio Dimatulac was shot dead at his residence in Barangay San Nicolas, Masantol, Pampanga.

On 5 November 1995, a complaint for Murder was filed before the Municipal Circuit Trial Court (MCTC) of Macabebe-Masantol in Macabebe, Pampanga, by SPO1 Renato Layug of the Masantol Police Station against private respondents Mayor Santiago Yabut, Martin Yabut, Servillano Yabut, Evelino David, Justino Mandap, Casti David, Francisco Yambao, Juan Magat, Arturo Naguit, Fortunato Mallari, Jesus de la Cruz, Joselito Miranda, SPO3 Gilberto Malabanan, Aniano Magnaye, Vladimir Yumul, a certain "Danny," and a certain "Koyang/Arding." The complaint was docketed as Criminal Case No. 95-360. After conducting a preliminary

examination in the form of searching questions and answers, and finding probable cause, Judge Designate Serafin B. David of the MCTC issued warrants for the arrest of the accused and directed them to file their counter-affidavits.

Only accused Evelino David, Justino Mandap, Juan Magat and Francisco Yambao were arrested; while only Francisco Yambao submitted his counter affidavit.[3]

On 1 December 1995, after appropriate proceedings, Judge David issued a Resolution[4] in Criminal Case No. 95-360 finding reasonable ground to believe that the crime of murder had been committed and that the accused were probably guilty thereof. His findings of fact and conclusions were as follows:

That on or about November 3, 1995, all the accused under the leadership of Mayor Santiago "Docsay" Yabut, including two John Does identified only as Dan/Danny and Koyang/Arding, went to Masantol, Pampanga for the purpose of looking for a certain PO3 Virgilio Dimatulac.

At first, the accused, riding on [sic] a truck, went to the Municipal Hall of Masantol, Pampanga inquiring about PO3 Virgilio Dimatulac. Thereafter, they went to the house of Mayor Lacap for the purpose of inquiring [about] the [the location of the] house of PO3 Virgilio Dimatulac, until finally, they were able to reach the house of said Virgilio Dimatulac at San Nicolas, Masantol, Pampanga.

Upon reaching the house of PO3 Virgilio Dimatulac, the truck the accused were all riding, stopped and parked in front of the house of said PO3 Virgilio Dimatulac, some of the accused descended from the truck and positioned themselves around the house while others stood by the truck and the Mayor stayed [in] the truck with a bodyguard.

Accused Billy Yabut, Kati Yabut and Francisco Yambao went inside the house of Virgilio Dimatulac [and] were even offered coffee.

[A]ccused Yabut brothers (Kati and Billy) strongly suggested to Virgilio Dimatulac to go down to see the Mayor outside in front of his house to say sorry.

[W]hen Virgilio Dimatulac went down from his house, suddenly [a] gun shot was heard and then, the son of Virgilio Dimatulac, Peter Paul, started to shout the following words: "What did you do to my father?!"

One of the men of Mayor "Docsay" Yabut shot Virgilio Dimatulac, and as a consequence, he died; and before he expired, he left a dying declaration pointing to the group of Mayor "Docsay" Yabut as the one responsible.

That right after Virgilio Dimatulac was shot, accused "Docsay" Yabut ordered his men to go on board the truck and immediately left away leaving Virgilio Dimatulac bleeding and asking for help.

On their way home to Minalin, accused Santiago "Docsay" Yabut gave money to accused John Doe Dan/Danny and Francisco "Boy" Yambao was asked to bring the accused John Doe to Nueva Ecija which he did.

Further, accused Santiago "Docsay" Yabut told his group to deny that they ever went to Masantol.

The court, after having conducted preliminary examination on the complainant and the witnesses presented, [is] satisfied that there is a [sic] reasonable ground to believe that the crime of murder was committed and that the accused in conspiring and confederating with one another are probably guilty thereof.

Circumstantial evidence strongly shows the presence of conspiracy.

That in order not to frustrate the ends of justice, warrants of arrest were issued against Santiago Yabut, Martin Yabut, Servillano Yabut, Francisco Yambao, Avelino David, Casti David, Catoy Naguit, Fortunato Mallari, Boy dela Cruz, Lito Miranda and Juan Magat with no bail recommended.

However, with respect to accused Dan/Danny and Koyang/Arding, the court directed the police authorities to furnish the court [a] descriptio personae of the accused for the purpose of issuing the needed warrant of arrest.

The accused were furnish [sic] copies of the complaint and affidavits of witnesses for them to file their counter-affidavits in accordance to [sic] law.

As of this date, only accused Francisco "Boy" Yambao filed his counter-affidavit and all the others waived the filing of the same.

A close evaluation of the evidence submitted by the accused Francisco Yambao which the court finds it [sic] straightforward and more or less credible and seems to be consistent with truth, human nature and [the] natural course of things and lack of motives [sic], the evidence of guilt against him is rather weak [compared to] the others, which [is why] the court recommends a cash bond of P50,000.00 for his provisional liberty, and the court's previous order of no bail for said accused is hereby reconsidered.

WHEREFORE, premises considered, the Clerk of Court is directed to forward the entire records of the case to the Office of the Provincial Prosecutor of Pampanga for further action, together with the bodies of accused Francisco Yambao and Juan Magat to be remanded to the provincial Jail of Pampanga.[5] (underscoring supplied)

In a sworn statement,[6] petitioner Peter Paul Dimatulac narrated that Mayor Santiago Yabut, accompanied by a number of bodyguards, went to the residence of PO3 Virgilio Dimatulac to talk about a problem between the Mayor and Peter Paul's uncle, Jun Dimatulac. Virgilio warmly welcomed the group and even prepared coffee for them. Servillano and Martin Yabut told Virgilio to come down from his house and apologize to the Mayor, but hardly had Virgilio descended when Peter Paul heard a gunshot. While Peter Paul did not see who fired the shot, he was sure it was one of Mayor Yabut's companions. Peter Paul opined that his father was killed because the latter spoke to the people of Minalin, Pampanga, against the Mayor. Peter Paul added in a supplemental statement (Susog na Salaysay)[7] that he heard Mayor Yabut order Virgilio killed.

In his Sinumpaang Salaysay,[8] Police Officer Leopoldo Soriano of the Masantol Municipal Police Station in Masantol, Pampanga, declared that on 3 November 1995, between 3:30 and 4:00 p.m., while he was at the police station, three men approached him and asked for directions to the house of Mayor Epifanio Lacap. Soriano recognized one of the men as SPO1 Labet Malabanan of Minalin, Pampanga. The group left after Soriano gave them directions, but one of the three returned to ask whether PO3 Virgilio Dimatulac was on duty, to which Soriano replied that Dimatulac was at home. The group left on board a military truck headed for San Nicolas, Masantol, Pampanga. Later that day, SPO2 Michael Viray received a telephone call at the police station reporting that someone had shot Virgilio Dimatulac.

Thereafter, Pampanga Assistant Provincial Prosecutor Sylvia Q. Alfonso-Flores conducted a reinvestigation. However, it is not clear from the record whether she conducted the same motu proprio or upon motion of private respondents Santiago Yabut, Servillano Yabut and Martin Yabut (hereafter YABUTs). All of the accused who had not submitted their counter-affidavits before the MCTC, except accused "Danny" and "Koyang/Arding," submitted their counter-affidavits to Assistant Provincial Prosecutor Alfonso Flores.

In her Resolution dated 29 January 1996,[9] Assistant Provincial Prosecutor Alfonso-Flores found that the YABUTs and the assailant Danny, to the exclusion of the other accused, were in conspiracy with one another, but that the offense committed was only homicide, not murder. In support of such finding, Alfonso-Flores reasoned thus:

The complainant in this case charges the crime of Murder qualified by treachery. It must be noted that to constitute treachery, two conditions must be present, to wit, 1) the employment of the [sic] means of execution

were give [sic] the person attacked no opportunity to defend himself or to retaliate; and 2) the means of execution were deliberately or consciously adopted xxx.

In the instant case, the presence of the first requisite was clearly established by the evidence, such that the attack upon the victim while descending the stairs was so sudden and unexpected as to render him no opportunity to defend himself or to retaliate. However, the circumstances, as portrayed by witness Peter Paul Dimatulac, negate the presence of the second requisite. According to the said witness, the victim was already descending when Mayor Yabut commanded the assailant to shoot him, and immediately thereafter, he heard the gunshot. This would therefore show that the assailant did not consciously adopt the position of the victim at the time he fired the fatal shot. The command of Mayor Yabut to shoot came so sudden as to afford no opportunity for the assailant to choose the means or method of attack. The act of Mayor Yabut in giving the command to shoot further bolster[s] the fact that the conspirator did not concert the means and method of attack nor the manner thereof. Otherwise there would have been no necessity for him to give the order to the assailant. The method and manner of attack was adopted by the assailant at the spur of the moment and the vulnerable position of the victim was not deliberately and consciously adopted. Treachery therefore could not be appreciated and the crime reasonably believe[d] to have been committed is Homicide as no circumstance would qualify the killing to murder.

Alfonso-Flores then ruled:

WHEREFORE, in view of the foregoing, it is hereby recommended that:

1. An information be filed with the proper court charging Santiago, Servillano and Martin all surnamed Yabut, and one John Doe alias Danny as conspirators in the crime of Homicide;
2. The case be dismissed against accused Evelino David, Justino Mandap a.k.a. Casti David, Francisco Yambao, Juan Magat, Arturo Naguit, Bladimir Dimatulac, Fortunato Mallari, Aniano Magnaye, Gilberto Malabanan, Jesus dela Cruz and Joselito Miranda.

Bail of P20,000.00 for each of the accused is likewise recommended.

The Resolution discloses that Alfonso-Flores conducted a hearing on 11 January 1996 and clarificatory questions were propounded only to Peter Paul Dimatulac.

On 23 February 1996, before the Information for homicide was filed, complainants, herein petitioners, appealed the resolution of Alfonso-Flores to the Secretary of the Department of Justice (DOJ).[10] They alleged in their appeal that:

1. THE ASSISTANT PROVINCIAL PROSECUTOR NOT ONLY ERRED IN RULING THAT THERE WAS NO TREACHERY TO QUALIFY THE CRIME TO MURDER, BUT LIKEWISE ERRED IN NOT APPRECIATING THE PRESENCE OF OTHER QUALIFYING CIRCUMSTANCES, TO WIT:

A. THAT THE ACCUSED COMMITTED THE CRIME WITH THE AID OF ARMED MEN AND WITH THE USE OF A PERSON TO INSURE OR AFFORD IMPUNITY;

B. THAT THE CRIME WAS COMMITTED IN CONSIDERATION OF A PRICE, REWARD, OR PROMISE;

C. THAT THE CRIME WAS COMMITTED ON THE OCCASION OF A DESTRUCTIVE CYCLONE, WHEN THE SUPER-TYPHOON "ROSING" WAS RAGING ON NOVEMBER 3, 1995;

D. THAT THE CRIME WAS COMMITTED WITH EVIDENT PREMEDITATION;

2. THAT THE HONORABLE INVESTIGATING ASSISTANT PROSECUTOR ERRED IN DISMISSING THE COMPLAINT AGAINST FORTUNATO MALLARI AND FRANCISCO YAMBAO BY RULING

OUT CONSPIRACY WITH THE YABUT BROTHERS AS AGAINST FORTUNATO MALLARI AND NOT CHARGING FRANCISCO YAMBAO AS AN ACCESSORY TO MURDER.

To refute Alfonso-Flores' finding that the means of execution were not deliberately adopted, petitioners asserted that the meeting of the accused and the victim was not accidental as the former purposely searched for the victim at the height of a typhoon, while accused Mayor Santiago Yabut even remarked to his co-accused "Danny," "Dikitan mo lang, alam mo na kung ano ang gagawin mo, bahala ka na" (Just stay close to him, you know what to do). Thus, Danny positioned himself near the stairs to goad the victim to come out of his house, while Fortunato Mallari represented to the deceased that the latter was being invited by a certain General Ventura. When the victim declined the invitation by claiming he was sick, accused Servillano Yabut persuaded the victim to come down by saying, "[T]o settle this matter, just apologize to the Mayor who is in the truck." In view of that enticement, the victim came down, while Danny waited in ambush. To emphasize the accused's resolve to kill the deceased, petitioners further narrated that when the deceased ran away after the first shot, the gunman still pursued him, while Mayor Santiago Yabut, who was a doctor, kept away at a safe distance and told everyone in the truck, "Tama na, bilisan ninyo," (That's enough, move quickly) without giving medical assistance to the deceased and without exerting any effort to arrest the gunman.

The Office of the Provincial Prosecutor of Pampanga was furnished with a copy of the Appeal.

On 26 February 1996, Provincial Prosecutor Jesus Y. Manarang issued a Resolution[11] ordering the release of accused Evelino David, Justino Mandap, Juan Magat and Arturo Naguit (who were then detained) in view of the aforementioned resolution of Alfonso-Flores, which, as stated in the order, the Provincial Prosecutor approved "on February 7, 1996."

On 28 February 1996, an Information[12] for Homicide, signed by Assistant Provincial Prosecutor Flores and Provincial Prosecutor Jesus Y. Manarang, was filed before Branch 55 of the Regional Trial Court (RTC) in Macabebe, Pampanga, against the YABUTs and John Doe alias "Danny Manalili" and docketed as Criminal Case No. 96-1667(M). The accusatory portion of the information read as follows:

That on or about the 3rd day of November, 1995, in the municipality of Masantol, province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with deliberate intent to take the life of PO3 Virgilio A. Dimatulac, did then and there wilfully, unlawfully and feloniously shoot the said PO3 Virgilio A. Dimatulac on his abdomen with the use of a handgun, thereby inflicting upon him a gunshot wound which cause[d] the death of the said victim.

All contrary to law.

The Information, although dated 29 January 1996 was signed by Provincial Prosecutor Manarang on "2/27/96", i.e., a day before its filing in court.

On 28 February 1996, Judge Reynaldo V. Roura, presiding judge of Branch 55, approved the cash bonds of the YABUTs, each in the amount of P20,000.00, and recalled the warrants for their arrest.[13]

On 29 February 1996, Atty. Amado Valdez, who had entered his appearance as private prosecutor, filed two (2) motions with the trial court: (1) a Motion to Issue Hold Departure Order Against All Accuseds[14] [sic]; and an (2) Urgent Motion to Defer Proceedings,[15] copies of which were furnished the Office of the Provincial Prosecutor of Pampanga. The second motion was grounded on the pendency of the appeal before the Secretary of Justice and a copy thereof was attached to the motion. Judge Roura set the motions for hearing on 8 March 1996.[16]

On 7 March 1996, Judge Roura ordered the arrest of the remaining accused, Danny Manalili.[17]

On 8 March 1996, the YABUTs filed their opposition[18] to the Motion to Issue Hold Departure Order and the Motion to Defer Proceedings. The YABUTs asserted that, as to the first, by posting bail bonds, they submitted to the jurisdiction of the trial court and were bound by the condition therein to "surrender themselves whenever so required by the court, and to seek permission from the court should any one of them desire to travel;" and, as to the second, the pendency of the appeal before the Secretary of Justice was not a ground to defer arraignment; moreover, the trial court had to consider their right to a speedy trial, especially since there was no definite date for the resolution of the appeal. Then invoking this Court's rulings in *Crespo v. Mogul*[19] and *Balgos v. Sandiganbayan*,[20] the YABUTs further asserted that petitioners should have filed a motion to defer the filing of the information for homicide with the Office of the Provincial Prosecutor, or sought, from the Secretary of Justice, an order directing the Provincial Prosecutor to defer the filing of the information in court.

In a Reply[21] to the opposition, the private prosecution, citing Section 20 of Rule 114 of the Rules of Court, insisted on the need for a hold-departure order against the accused; argued that the accused's right to a speedy trial would not be impaired because the appeal to the Secretary of Justice was filed pursuant to Department Order No. 223 of the DOJ and there was clear and convincing proof that the killing was committed with treachery and other qualifying circumstances not absorbed in treachery; and contended that the accused's invocation of the right to a speedy trial was inconsistent with their filing of various dilatory motions during the preliminary investigation. The YABUTs filed a Rejoinder[22] to this Opposition.

On 26 March 1996, Judge Roura deferred resolution of the Motion to Issue a Hold Departure Order until "such time that all the accused who are out on bail are arraigned," but denied the Motion to Defer Proceedings as he found no compelling reason therefor, considering that although the appeal was filed on 23 February 1996, "the private prosecution has not shown any indication that [the] appeal was given due course by the Secretary of Justice." Judge Roura also set the arraignment of the accused on 12 April 1996.[23]

It would appear that the private prosecution moved to reconsider the order denying the Motion to Defer Proceedings since, on 12 April 1996, Judge Roura issued an Order[24] giving the private prosecutor "ten (10) days from today within which to file a petition for certiorari questioning the order of the Court denying his motion for reconsideration of the order of March 26, 1996." Arraignment was then reset to 3 May 1996.

On 19 April 1996, petitioners filed a motion to inhibit Judge Roura[25] from hearing Criminal Case No. 96-1667(M) on the ground that he: (a) hastily set the case for arraignment while the former's appeal in the DOJ was still pending evaluation; and (b) prejudged the matter, having remarked in open court that there was "nothing in the records of the case that would qualify the case into Murder." At the same time, petitioners filed a petition for prohibition[26] with the Court of Appeals docketed therein as CA-G.R. SP No. 40393, to enjoin Judge Roura from proceeding with the arraignment in Criminal Case No. 96-1667(M).

On 24 April 1996, Public Prosecutor Olimpio R. Datu filed a Manifestation and Comment[27] with the trial court wherein he opposed the motion to inhibit Judge Roura; manifested that "there is nothing in the record - which shows that the subject killing is qualified into murder;" and announced that he "will no longer allow the private prosecutor to participate or handle the prosecution of [the] case" in view of the latter's petition to inhibit Judge Roura.

On 29 April 1996, Judge Roura voluntarily inhibited himself and ordered the case transferred to Branch 54 of the RTC, presided over by herein public respondent Judge Seginando Villon.[28]

On 30 April 1996, the Branch Clerk of Court of Branch 54 of the RTC received the record of Criminal Case No.

96-1667(M).[29]

On 30 April 1996, petitioners filed with the trial court a Manifestation[30] submitting, in connection with their Motion to Defer Proceedings and Motion to Inhibit Judge Roura, documentary evidence to support their contention that the offense committed was murder, not homicide. The documents which they claimed were not earlier submitted by the public prosecution were the following:

- a. Counter-Affidavit of SPO1 Gilberto D. Malabanan.
- b. Sinumpaang Salaysay of Vladimir Yumul y Dimatulac.
- c. Counter-Affidavit of Francisco I. Yambao.
- d. Counter-Affidavit of SPO2 Fortunato Mallari.
- e. Sinumpaang Salaysay of Aniano Magnaye.
- f. Sinumpaang Salaysay of Leopoldo Soriano.
- g. Transcript of Stenographic Notes of the Preliminary Investigation of Criminal Case No. 95-360, containing the testimony of:
 - a. Peter Paul Dimatulac
 - b. Vladimir D. Yumul
 - c. SPO1 Gilberto Malabanan
 - d. PO3 Alfonso Canilao
- h. Investigation Report- dated November 4, 1995.
- i. Dying declaration of Virgilio Dimatulac.
- j. Sketch
- k. Unscaled Sketch

Likewise on 30 April 1996, the Court of Appeals promulgated, in CA-G.R. SP No. 40393, a Resolution[31] directing respondent therein to file his comment to the petition within ten days from notice and to show cause within the same period "why no writ of preliminary injunction should be issued as prayed for in the petition." However, the Court of Appeals "deferred action" on the prayer for a temporary restraining order "until after the required comment [was] submitted."

On 3 May 1996, petitioners filed an Ex-Parte Manifestation[32] with the RTC, furnishing the trial court with a copy of the aforementioned resolution of the Court of Appeals and drawing the attention of the trial court to the rulings of this Court in "Valdez vs. Aquilisan, (133 SCRA 150), Galman vs. Sandiganbayan, and Eternal Gardens Memorial Park Corp. vs. Court of Appeals" as well as the decision in Paul G. Roberts vs. The Court of Appeals."

On 3 May 1996, Judge Villon issued an order resetting arraignment of the accused to 20 May 1996.[33] On the latter date, the YABUTs each entered a plea of not guilty.[34]

Alarmed by the conduct of arraignment, petitioners filed, on 27 May 1996, an Urgent Motion to Set Aside Arraignment,[35] citing the resolution of 30 April 1996 of the Court of Appeals in CA-G.R. SP No. 40393 which, inter alia, deferred resolution on the application for a temporary restraining order "until after the required comment is submitted by the respondent;" stressed that the filing of the information for the lesser offense of homicide was "clearly unjust and contrary to law in view of the unquestionable attendance of circumstances qualifying the killing to murder;" and asserted that a number of Supreme Court decisions supported suspension of the proceedings in view of the pendency of their appeal before the DOJ.

On 31 May 1997, Judge Villon issued an Order[36] directing the accused to file their comment on the Urgent Motion to Set Aside Arraignment within fifteen days from notice.

In a letter[37] addressed to the Provincial Prosecutor dated 7 June 1996, public respondent Secretary Teofisto

Guingona of the DOJ resolved the appeal in favor of petitioners. Secretary Guingona ruled that treachery was present and directed the Provincial Prosecutor of San Fernando, Pampanga "to amend the information filed against the accused from homicide to murder," and to include Fortunato Mallari as accused in the amended information. The findings and conclusions of Secretary Guingona read as follows:

Contrary to your findings, we find that there is treachery that attended the killing of PO3 Dimatulac. Undisputedly, the victim was suddenly shot while he was descending the stairs. The attack was unexpected as the victim was unarmed and on his way to make peace with Mayor Yabut, he was unsuspecting so to speak. From the circumstances surrounding his killing, PO3 Dimatulac was indeed deprived of an opportunity to defend himself or to retaliate.

Corollarily, we are also convinced that such mode of attack was consciously and deliberately adopted by the respondents to ensure the accomplishment of their criminal objective. The admission of respondent Malabanan is replete with details on how the principal respondent, Mayor Yabut, in conspiracy with the assailant and others, had consciously and deliberately adopted means to ensure the execution of the crime. According to him, while they were on their way to the victim's house, Mayor Yabut already instructed Danny, the assailant, that, "Dikitan mo lang, alam na na king ano ang gagawin mo, bahala ka na". This explains why Danny positioned himself near the stairs of the victim's house armed with a handgun, such positioning was precisely adopted as a means to ensure the accomplishment of their evil design and Mayor Yabut ordered nobody else but Danny to shoot the victim while descending the stairs as his position was very strategic to ensure the killing of the victim.

As has been repeatedly held, to constitute treachery, two conditions must be present, to wit: (1) employment of means of execution that gives the person [attacked] no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted (People vs. Talaver, 230 SCRA 281 [1994]). In the case at bar, these two (2) requisites are present as established from the foregoing discussion. Hence, there being a qualifying circumstance of treachery, the crime committed herein is murder, not homicide (People vs. Gapasin, 231 SCRA 728 [1994]).

Anent the alleged participation of respondents Fortunato Mallari and Francisco Yambao, we find sufficient evidence against Mallari as part of the conspiracy but not against Yambao. As can be gleaned from the sworn-statement of Yambao, which appears to be credible, Mallari tried also to persuade the victim to go with them, using as a reason that he (victim) was being invited by General Ventura. He was also seen trying to fix the gun which was used in killing the victim. These actuations are inconsistent with the claim that his presence at the crime scene was merely passive.

On the other hand, we find credible the version and explanation of Yambao. Indeed, under the obtaining circumstances, Yambao had no other option but to accede to the request of Mayor Yabut to provide transportation to the assailant. There being an actual danger to his life then, and having acted under the impulse of an uncontrollable fear, reason dictates that he should be freed from criminal liability.[38]

The YABUTs moved to reconsider the resolution,[39] citing Section 4 of "Administrative/Administration Order No. 223 of the DOJ." [40]

In an Ex-Parte Manifestation[41] dated 21 June 1996, petitioners called the trial court's attention to the resolution of the Secretary of Justice, a copy of which was attached thereto. Later, in a Manifestation and Motion[42] dated 1 July 1996, petitioners asked the trial court to grant their motion to set aside arraignment. Attached thereto was a copy of the Manifestation and Motion[43] of the Solicitor General dated 18 June 1996 filed with the Court of Appeals in CA-G.R. SP No. 40393 wherein the Solicitor General joined cause with petitioners and prayed that "in the better interest of justice, [the] Petition for Prohibition be GRANTED and a writ of prohibition be ISSUED forthwith." In support of said prayer, the Solicitor General argued:

2. There is merit to the cause of petitioners. If the Secretary of Justice would find their Appeal meritorious, the Provincial Prosecutor would be directed to upgrade the Information to Murder and extreme prejudice if not gross injustice would thereby have been avoided.

3 Consequently, the undersigned counsel interpose no objection to the issuance of a writ of prohibition enjoining respondent Judge from holding further proceedings in Criminal Case No. 96-1667-M, particularly in holding the arraignment of the accused, pending resolution of the Appeal with the Secretary of Justice.

The YABUTs opposed[44] petitioners' Manifestation and Motion dated 1 July 1996 because they had already been arraigned and, therefore, would be placed in double jeopardy; and that the public prosecutor -- not the private prosecutor -- had control of the prosecution of the case.

In his letter[45] dated 1 July 1996 addressed to the Provincial Prosecutor of Pampanga, the Secretary of Justice set aside his order to amend the information from homicide to murder considering that the appeal was rendered moot and academic by the arraignment of the accused for homicide and their having entered their pleas of not guilty. The Secretary stated:

Considering that Santiago Yabut, Servillano Yabut and Martin Yabut had already been arraigned on May 20, 1996 and had pleaded not guilty to the charge of homicide, as shown by a copy of the court order dated May 20, 1996, the petition for review insofar as the respondents-Yabut are concerned has been rendered moot and academic.

However, the Secretary reiterated that Fortunato Mallari should be included in the information for homicide.

On 30 July 1996, Public Prosecutor Jaime Bustos filed a Motion for Leave to Amend Information and to Admit Amended Information.[46] The Amended Information[47] merely impleaded Fortunato Mallari as one of the accused.

In his Order[48] of 1 August 1996, Judge Villon denied petitioners' motion to set aside arraignment, citing Section 4, DOJ Department Order No. 223, and the letter of the Secretary of Justice of 1 July 1996. Petitioners forthwith moved for reconsideration[49] of the order, arguing that the Motion to Defer the Proceedings filed by petitioners was meritorious and did not violate the accused's right to speedy trial; and that the DOJ had ruled that the proper offense to be charged was murder and did not reverse such finding. Petitioners also cited the Solicitor General's stand[50] in CA-G.R. SP No. 40393 that holding accused's arraignment in abeyance was proper under the circumstances. Finally, petitioners contended that in proceeding with the arraignment despite knowledge of a petition for prohibition pending before the Court of Appeals, the trial court violated Section 3(d), Rule 71 of the Rules of Court on indirect contempt. The YABUTs opposed the motion on the ground that it raised no argument which had not yet been resolved.[51]

On 3 September 1996, petitioners filed a Motion to Defer Arraignment of Accused Fortunato Mallari,[52] which the trial court granted in view of petitioners' motion for reconsideration of the court's order denying petitioners' motion to set aside private respondents' arraignment.[53] As expected, Mallari moved to reconsider the trial court's order and clamored for consistency in the trial court's rulings.[54]

In an order[55] dated 15 October 1996, Judge Villon denied reconsideration of the order denying petitioners' motion to set aside arraignment, citing the YABUTs' right to a speedy trial and explaining that the prosecution of an offense should be under the control of the public prosecutor, whereas petitioners did not obtain the conformity of the prosecutor before they filed various motions to defer proceedings. Considering said order, Judge Villon deemed accused Mallari's motion for reconsideration moot and academic. [56]

On 16 October 1996, the Court of Appeals promulgated its decision[57] in CA-G.R. SP No. 40393 dismissing the

petition therein for having become moot and academic in view of Judge Roura's voluntary inhibition, the arraignment of the YABUTs and the dismissal, by the Secretary of Justice, of petitioners' appeal as it had been mooted by said arraignment.

Judge Villon was later detailed to Branch 24 of the Regional Trial Court of Manila, and Judge Roura was ordered by the Supreme Court to preside over cases pending in Branch 54 of the Regional Trial Court of Macabebe, Pampanga, which was previously presided over by Judge Villon.[58] Judge Roura informed the Office of the Court Administrator and this Court that he had already inhibited himself from hearing Criminal Case No. 96-1667(M).[59]

On 28 December 1996, petitioners filed the instant Petition for Certiorari/Prohibition and Mandamus. They urge this Court to reverse the order of respondent Judge denying their Motion to Set Aside Arraignment; set aside arraignment of private respondents; order that no further action be taken by any court in Criminal Case No. 96-1667(M) until this petition is resolved; and order respondents Secretary of Justice and the prosecutors concerned to amend the information from homicide to murder.

Petitioners insist that the killing of PO3 Virgilio Dimatulac was attended by treachery since private respondents tricked the victim into coming out of his house and then shot him while he was going down the stairs. There was, petitioners claim, "an orchestrated effort on the part of [private respondents] to manipulate the rules on administrative appeals with the end in view of evading prosecution for the [non-bailable] offense of murder," as shown by the following events or circumstances:

- (1) Assistant Provincial Prosecutor Alfonso-Flores downgraded the nature of the crime committed to homicide, a bailable offense, on strength of a motion for reinvestigation filed by the YABUTs who had not yet been arrested.
- (2) Respondent Mayor and his companions returned to Minalin after the killing and went into hiding for four (4) months until the offense charged was downgraded.
- (3) The information for homicide was nevertheless filed despite notice to the Office of the Provincial Prosecutor of the appeal filed with the Secretary of Justice and request to defer any action on the case.
- (4) The Office of the Public Prosecutor of Pampanga disallowed the private prosecutor from further participating in the case.
- (5) Judge Roura denied the motion to defer proceedings and declared in open court that there was no prima facie case for murder, notwithstanding the pendency of petitioners' appeal with respondent Secretary of Justice.
- (6) Even before receipt by petitioners of Judge Roura's order inhibiting himself and the order regarding the transfer of the case to Branch 54, public respondent Judge Villon set the case for arraignment and, without notice to petitioners, forthwith arraigned the accused on the information for homicide on 20 May 1996, despite the pendency of the petition for prohibition before the Court of Appeals and of the appeal before the DOJ.
- (7) The Pampanga Provincial Prosecutor's Office did not object to the arraignment nor take any action to prevent further proceedings on the case despite knowledge of the pendency of the appeal.
- (8) The Provincial Prosecutor did not comply with the resolution of 7 June 1996 of the Secretary of Justice directing the amendment of the information to charge the crime of murder.

Petitioners argue that in light of *Roberts, Jr. v. Court of Appeals*,^[60] respondent Judge acted in excess of his jurisdiction in proceeding with private respondents' arraignment for homicide and denying petitioners' motion to set aside arraignment. Moreover, although respondent Judge Villon was not the respondent in CA-G.R. SP No.

40393, he should have deferred the proceedings just the same as the very issue in said case was whether or not the RTC could proceed with the arraignment despite the pending review of the case by respondent Secretary of Justice. Further, Judge Villon unjustly invoked private respondents' right to a speedy trial, after a lapse of barely three (3) months from the filing of the information on 23 February 1996; overlooked that private respondents were estopped from invoking said right as they went into hiding after the killing, only to resurface when the charge was reduced to homicide; and failed to detect the Provincial Prosecutor's bias in favor of private respondents. Judge Villon should have been more circumspect as he knew that by proceeding with the arraignment, the appeal with the DOJ would be rendered technically nugatory.

Finally, petitioners submit that the DOJ rule prohibiting appeals from resolutions of prosecutors to the Secretary of Justice once the accused had already been arraigned applies only to instances where the appellants are the accused, since by submitting to arraignment, they voluntarily abandon their appeal.

In their comment, private respondents contend that no sufficient legal justification exists to set aside private respondents' arraignment, it having already been reset twice from 12 April 1996 to 3 May 1996, due to petitioners' pending appeal with the DOJ; and from 3 May 1996 to 20 May 1996, due to the transfer of this case to Branch 54. Moreover, as of the latter date, the DOJ had not yet resolved petitioners' appeal and the DOJ did not request that arraignment be held in abeyance, despite the fact that petitioners' appeal had been filed as early as 23 February 1996, at least 86 days prior to private respondents' arraignment. They point out that petitioners did not move to reconsider the RTC's 26 March 1996 denial of the Motion to Defer, opting instead for Judge Roura's recusal and recourse to the Court of Appeals, and as no restraining order was issued by the Court of Appeals, it was but proper for respondent Judge to proceed with the arraignment of private respondents, to which the public and private prosecutors did not object.

Private respondents further argue that the decision of respondent Secretary, involving as it did the exercise of discretionary powers, is not subject to judicial review. Under the principle of separation of powers, petitioners' recourse should have been to the President. While as regards petitioners' plea that the Secretary be compelled to amend the information from homicide to murder, private respondents submit that mandamus does not lie, as the determination as to what offense was committed is a prerogative of the DOJ, subject only to the control of the President.

As regards DOJ Department Order No. 223, private respondents theorize that appeal by complainants is allowed only if the complaint is dismissed by the prosecutor and not when there is a finding of probable cause, in which case, only the accused can appeal. Hence, petitioners' appeal was improper.

Finally, private respondents stress the fact that petitioners never appealed the withdrawal by the public prosecutor of the private prosecutor's authority to handle the case.

In its comment for the public respondents, the Office of the Solicitor General (OSG) prays that the petition be denied because: (a) in accordance with Section 4 of DOJ Order No. 223, upon arraignment of the accused, the appeal to the Secretary of Justice shall be dismissed *motu proprio*; (b) the filing of the information for homicide was in compliance with the directive under Section 4(2), D.O. No. 223, i.e., an appeal or motion for reinvestigation from a resolution finding probable cause shall not hold the filing of the information in court; (c) the trial court even accommodated petitioners by initially deferring arraignment pending resolution by the Court of Appeals of the petition for prohibition, and since said Court did not issue any restraining order, arraignment was properly had; and (d) reliance on *Roberts* is misplaced, as there, accused *Roberts* and others had not been arraigned and respondent Judge had ordered the indefinite postponement of the arraignment pending resolution of their petitions before the Court of Appeals and the Supreme Court.

We now consider the issues enumerated at the outset of this ponencia.

Plainly, the proceedings below were replete with procedural irregularities which lead us to conclude that something had gone awry in the Office of the Provincial Prosecutor of Pampanga resulting in manifest advantage to the accused, more particularly the YABUTs, and grave prejudice to the State and to private complainants, herein petitioners.

First, warrants for the arrest of the YABUTs were issued by the MCTC, with no bail recommended for their temporary liberty. However, for one reason or another undisclosed in the record, the YABUTs were not arrested; neither did they surrender. Hence, they were never brought into the custody of the law. Yet, Asst. Provincial Fiscal Alfonso-Reyes, either *motu proprio* or upon motion of the YABUTs, conducted a reinvestigation. Since said accused were at large, Alfonso-Reyes should not have done so. While it may be true that under the second paragraph of Section 5, Rule 112 of the Rules of Court, the provincial prosecutor may disagree with the findings of the judge who conducted the preliminary investigation, as here, this difference of opinion must be on the basis of the review of the record and evidence transmitted by the judge. Were that all she did, as she had no other option under the circumstances, she was without any other choice but to sustain the MCTC since the YABUTs and all other accused, except Francisco Yambao, waived the filing of their counter-affidavits. Then, further stretching her magnanimity in favor of the accused, Alfonso-Reyes allowed the YABUTs to submit their counter-affidavits without first demanding that they surrender because of the standing warrants of arrest against them. In short, Alfonso-Reyes allowed the YABUTs to make a mockery of the law in order that they gain their provisional liberty pending trial and be charged with the lesser offense of homicide.

Second, Alfonso-Reyes recommended a bond of only P20,000.00 for the YABUTs and co-accused "Danny," despite the fact that they were charged with homicide and they were, at the time, fugitives from justice for having avoided service of the warrant of arrest issued by the MCTC and having failed to voluntarily surrender.

Third, Alfonso-Reyes was fully aware of the private prosecution's appeal to the DOJ from her resolution. She could not have been ignorant of the fact that the appeal vigorously assailed her finding that there was no qualifying circumstance attending the killing, and that the private prosecution had convincing arguments to support the appeal. The subsequent resolution of the Secretary of Justice confirmed the correctness of the private prosecution's stand and exposed the blatant errors of Alfonso-Reyes.

Fourth, despite the pendency of the appeal, Alfonso-Reyes filed the Information for homicide on 28 February 1996. It is interesting to note that while the information was dated 29 January 1996, it was approved by the Provincial Prosecutor only on 27 February 1996. This simply means that the Office of the Prosecutor was not, initially, in a hurry to file the Information. No undue prejudice could have been caused to the YABUTs if it were filed even later for the YABUTs were still at large; in fact, they filed their bonds of P20,000.00 each only after the filing of the Information. If Alfonso-Flores was extremely generous to the YABUTs, no compelling reason existed why she could not afford the offended parties the same courtesy by at least waiting for instructions from the Secretary of Justice in view of the appeal, if she were unwilling to voluntarily ask the latter for instructions. Clearly, under the circumstances, the latter course of action would have been the most prudent thing to do.

Fifth, as if to show further bias in favor of the YABUTs, the Office of the Provincial Prosecutor of Pampanga did not even bother to *motu proprio* inform the trial court that the private prosecution had appealed from the resolution of Alfonso-Flores and had sought, with all the vigour it could muster, the filing of an information for murder, as found by the MCTC and established by the evidence before it.

Unsatisfied with what had been done so far to accommodate the YABUTs, the Office of the Provincial Prosecutor did not even have the decency to agree to defer arraignment despite its continuing knowledge of the pendency of

the appeal. This amounted to defiance of the DOJ's power of control and supervision over prosecutors, a matter which we shall later elaborate on. Moreover, in an unprecedented move, the trial prosecutor, Olimpio Datu, had the temerity, if not arrogance, to announce that "he will no longer allow the private prosecutor to participate or handle the prosecution of [the] case" simply because the private prosecution had asked for the inhibition of Judge Roura. Said prosecutor forgot that since the offended parties here had not waived the civil action nor expressly reserved their right to institute it separately from the criminal action, then they had the right to intervene in the criminal case pursuant to Section 16 of Rule 110 of the Rules of Court.

It is undebatable that petitioners had the right to appeal to the DOJ from the resolution of Alfonso-Flores. The last paragraph of Section 4 of Rule 112 of the Rules of Court provides:

If upon petition by a proper party, the Secretary of Justice reverses the resolution of the provincial or city fiscal or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move for the dismissal of the complaint or information.

It is clear from the above, that the proper party referred to therein could be either the offended party or the accused.

More importantly, an appeal to the DOJ is an invocation of the Secretary's power of control over prosecutors. Thus, in *Ledesma v. Court of Appeals*,^[61] we emphatically held:

Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code,^[62] exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.

Section 39, Chapter 8, Book IV in relation to Section[s] 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

"(1) Supervision and Control. -- Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; x x x x."

Supplementing the aforequoted provisions are Section 3 of R.A. 3783 and Section 37 of Act 4007, which read:

"Section 3. x x x x

The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, and the State Prosecutors shall x x x perform such other duties as may be assigned to them by the Secretary of Justice in the interest of public service."

xxx xxx xxx

"Section 37. The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify, or revoke any decision or action of said chief of bureau, office, division or service."

"Supervision" and "control" of a department head over his subordinates have been defined in administrative law as follows:

"In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

Review as an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts. As a rule, only after administrative remedies are exhausted may judicial recourse be allowed.

DOJ Order No. 223 of 30 June 1993 recognizes the right of both the offended parties and the accused to appeal from resolutions in preliminary investigations or reinvestigations, as provided for in Section 1 and Section 4, respectively. Section 1 thereof provides, thus:

SECTION 1. What May Be Appealed. -- Only resolutions of the Chief State Prosecutor/Regional State Prosecutor/Provincial or City Prosecutor dismissing a criminal complaint may be the subject of an appeal to the Secretary of Justice except as otherwise provided in Section 4 hereof.

While the section speaks of resolutions dismissing a criminal complaint, petitioners herein were not barred from appealing from the resolution holding that only homicide was committed, considering that their complaint was for murder. By holding that only homicide was committed, the Provincial Prosecutor's Office of Pampanga effectively "dismissed" the complaint for murder. Accordingly, petitioners could file an appeal under said Section 1. To rule otherwise would be to forever bar redress of a valid grievance, especially where the investigating prosecutor, as in this case, demonstrated what unquestionably appeared to be unmitigated bias in favor of the accused. Section 1 is not to be literally applied in the sense that appeals by the offended parties are allowed only in cases of dismissal of the complaint, otherwise the last paragraph of Section 4, Rule 112, Rules of Court would be meaningless.

We cannot accept the view of the Office of the Solicitor General and private respondents that Section 4 of DOJ Department Order No. 223 is the controlling rule; hence, pursuant to the second paragraph thereof, the appeal of petitioners did not hold the filing of the information. As stated above, Section 4 applies even to appeals by the respondents or accused. The provision reads:

SEC. 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 a 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. (underscoring supplied)

The underlined portion indisputably shows that the section refers to appeals by respondents or accused. So we held in *Marcelo v. Court of Appeals*[63] that nothing in the ruling in *Crespo v. Mogul*,[64] reiterated in *Roberts v. Court of Appeals*,[65] forecloses the power or authority of the Secretary of Justice to review resolutions of his subordinates in criminal cases despite an information already having been filed in court. The Secretary of Justice is only enjoined to refrain, as far as practicable, from entertaining a petition for review or appeal from the action of the prosecutor once a complaint or information is filed in court. In any case, the grant of a motion to dismiss,

which the prosecution may file after the Secretary of Justice reverses an appealed resolution, is subject to the discretion of the court. In *Roberts* we went further by saying that Crespo could not have foreclosed said power or authority of the Secretary of Justice "without doing violence to, or repealing, the last paragraph of Section 4, Rule 112 of the Rules of Court" which is quoted above.

Indubitably then, there was, on the part of the public prosecution, indecent haste in the filing of the information for homicide, depriving the State and the offended parties of due process.

As to the second issue, we likewise hold that Judge Roura acted with grave abuse of discretion when, in his order of 26 March 1996,[66] he deferred resolution on the motion for a hold departure order until "such time that all the accused who are out on bail are arraigned" and denied the motion to defer proceedings for the reason that the "private prosecution has not shown any indication that [the] appeal was given due course by the Secretary of Justice." Neither rhyme nor reason or even logic, supports the ground for the deferment of the first motion. Precisely, immediate action thereon was called for as the accused were out on bail and, perforce, had all the opportunity to leave the country if they wanted to. To hold that arraignment is a prerequisite to the issuance of a hold departure order could obviously defeat the purpose of said order. As to the second motion, Judge Roura was fully aware of the pendency of petitioner's appeal with the DOJ, which was filed as early as 23 February 1996. In fact, he must have taken that into consideration when he set arraignment of the accused only on 12 April 1996, and on that date, after denying petitioners' motion to reconsider the denial of the motion to defer proceedings, he further reset arraignment to 3 May 1996 and gave petitioners ten (10) days within which to file a petition for certiorari to question his denial of the motion to defer and of the order denying the reconsideration. In any event, the better part of wisdom suggested that, at the very least, he should have asked petitioners as regards the status of the appeal or warned them that if the DOJ would not decide the appeal within a certain period, then arraignment would proceed.

Petitioners did in fact file the petition with the Court of Appeals on 19 April 1996 and, at the same time, moved to inhibit Judge Roura. These twin moves prompted Judge Roura to "voluntarily" inhibit himself from the case on 29 April 1996[67] and to transfer the case to the branch presided by public respondent Judge Villon. The latter received the record of the case on 30 April 1996. From that time on, however, the offended parties did not receive any better deal. Acting with deliberate dispatch, Judge Villon issued an order on 3 May 1996 setting arraignment of the accused on 20 May 1996. If Judge Villon only perused the record of the case with due diligence, as should be done by anyone who has just taken over a new case, he could not have helped but notice: (a) the motion to defer further proceedings; (2) the order of Judge Roura giving petitioners ten days within which to file a petition with the Court of Appeals; (3) the fact of the filing of such petition in CA-G.R. SP No. 40393; (4) the resolution of the Court of Appeals directing respondents to comment on the petition and show cause why the application for a writ of preliminary injunction should not be granted and deferring resolution of the application for a temporary restraining order until after the required comment was filed, which indicated a *prima facie* showing of merit; (5) the motion to inhibit Judge Roura precisely because of his prejudgment that the crime committed was merely homicide; (6) Judge Roura's subsequent inhibition; (7) various pieces of documentary evidence submitted by petitioners on 30 April 1996 supporting a charge of murder, not homicide; and (8) most importantly, the pending appeal with the DOJ.

All the foregoing demanded from any impartial mind, especially that of Judge Villon, a cautious attitude as these were unmistakable indicia of the probability of a miscarriage of justice should arraignment be precipitately held. However, Judge Villon cursorily ignored all this. While it may be true that he was not bound to await the DOJ's resolution of the appeal, as he had, procedurally speaking, complete control over the case and any disposition thereof rested on his sound discretion,[68] his judicial instinct should have led him to peruse the documents

submitted on 30 April 1996 and to initially determine, for his own enlightenment with serving the ends of justice as the ultimate goal, if indeed murder was the offense committed; or, he could have directed the private prosecutor to secure a resolution on the appeal within a specified time. Given the totality of circumstances, Judge Villon should have heeded our statement in Marcelo[69] that prudence, if not wisdom, or at least, respect for the authority of the prosecution agency, dictated that he should have waited for the resolution of the appeal then pending before the DOJ. All told, Judge Villon should not have merely acquiesced to the findings of the public prosecutor.

We do not then hesitate to rule that Judge Villon committed grave abuse of discretion in rushing the arraignment of the YABUTs on the assailed information for homicide. Again, the State and the offended parties were deprived of due process.

Up to the level then of Judge Villon, two pillars of the criminal justice system failed in this case to function in a manner consistent with the principle of accountability inherent in the public trust character of a public office. Judges Roura and Villon and prosecutors Alfonso-Flores and Datu need be reminded that it is in the public interest that every crime should be punished[70] and judges and prosecutors play a crucial role in this regard for theirs is the delicate duty to see justice done, i.e., not to allow the guilty to escape nor the innocent to suffer.[71]

Prosecutors must never forget that, in the language of *Suarez v. Platon*,[72] they are the representatives 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 at all; and whose interest, therefore, in a criminal prosecution is not that it shall win every case but that justice be done. As such, they are in a peculiar and every definite sense the servants of the law, whose two-fold aim is that guilt shall not escape or innocence suffer.

Prosecutors are charged with the defense of the community aggrieved by a crime, and are expected to prosecute the public action with such zeal and vigor as if they were the ones personally aggrieved, but at all times cautious that they refrain from improper methods designed to secure a wrongful conviction.[73] With them lies the duty to lay before the court the pertinent facts at the judge's disposal with strict attention to punctilios, thereby clarifying contradictions and sealing all gaps in the evidence, with a view to erasing all doubt from the court's mind as to the accused's innocence or guilt.

The judge, on the other hand, "should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly and properly administer justice." [74] He must view himself as a priest, for the administration of justice is akin to a religious crusade. Thus, exerting the same devotion as a priest "in the performance of the most sacred ceremonies of religious liturgy," the judge must render service with impartiality commensurate with the public trust and confidence reposed in him.[75] Although the determination of a criminal case before a judge lies within his exclusive jurisdiction and competence,[76] his discretion is not unfettered, but rather must be exercised within reasonable confines.[77] The judge's action must not impair the substantial rights of the accused, nor the right of the State and offended party to due process of law.[78]

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice.[79] Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.

In this case, the abuse of discretion on the part of the public prosecution and Judges Roura and Villon was gross, grave and palpable, denying the State and the offended parties their day in court, or in a constitutional sense, due process. As to said judges, such amounted to lack or excess of jurisdiction, or that their court was ousted of the

jurisdiction in respect thereto, thereby nullifying as having been done without jurisdiction, the denial of the motion to defer further hearings, the denial of the motion to reconsider such denial, the arraignment of the YABUTs and their plea of not guilty.

These lapses by both the judges and prosecutors concerned cannot be taken lightly. We must remedy the situation before the onset of any irreversible effects. We thus have no other recourse, for as Chief Justice Claudio Teehankee pronounced in *Galman v. Sandiganbayan*:^[80]

The Supreme Court cannot permit such a sham trial and verdict and travesty of justice to stand unrectified. The courts of the land under its aegis are courts of law and justice and equity. They would have no reason to exist if they were allowed to be used as mere tools of injustice, deception and duplicity to subvert and suppress the truth, instead of repositories of judicial power whose judges are sworn and committed to render impartial justice to all alike who seek the enforcement or protection of a right or the prevention or redress of a wrong, without fear or favor and removed from the pressures of politics and prejudice.

We remind all members of the pillars of the criminal justice system that theirs is not a mere ministerial task to process each accused in and out of prison, but a noble duty to preserve our democratic society under a rule of law.

Anent the third issue, it was certainly grave error for the DOJ to reconsider its 7 June 1996 resolution, holding that murder was committed and directing the Provincial Prosecutor to accordingly amend the information, solely on the basis of the information that the YABUTs had already been arraigned. In so doing, the DOJ relinquished its power of control and supervision over the Provincial Prosecutor and the Assistant Provincial Prosecutors of Pampanga; and meekly surrendered to the latter's inappropriate conduct or even hostile attitude, which amounted to neglect of duty or conduct prejudicial to the best interest of the service, as well as to the undue haste of Judge Roura and Villon in respect of the arraignment of the YABUTs. The sins of omission or commission of said prosecutors and judges resulted, in light of the finding of the DOJ that the crime committed was murder, in unwarranted benefit to the YABUTs and gross prejudice to the State and the offended parties. The DOJ should have courageously exercised its power of control by taking bolder steps to rectify the shocking "mistakes" so far committed and, in the final analysis, to prevent further injustice and fully serve the ends of justice. The DOJ could have, even if belatedly, joined cause with petitioners to set aside arraignment. Further, in the exercise of its disciplinary powers over its personnel, the DOJ could have directed the public prosecutors concerned to show cause why no disciplinary action should be taken against them for neglect of duty or conduct prejudicial to the best interest of the service in not, *inter alia*, even asking the trial court to defer arraignment in view of the pendency of the appeal, informing the DOJ, from time to time, of the status of the case, and, insofar as prosecutor Datu was concerned, in disallowing the private prosecutor from further participating in the case.

Finally, the DOJ should have further inquired into the vicissitudes of the case below to determine the regularity of arraignment, considering that the appeal was received by the DOJ as early as 23 February 1996.

We then rule that the equally hasty *motu proprio* "reconsideration" of the 7 June 1996 resolution of the DOJ was attended with grave abuse of discretion.

It is settled that when the State is deprived of due process in a criminal case by reason of grave abuse of discretion on the part of the trial court, the acquittal of the accused^[81] or the dismissal of the case^[82] is void, hence double jeopardy cannot be invoked by the accused. If this is so in those cases, so must it be where the arraignment and plea of not guilty are void, as in this case as above discussed.

WHEREFORE, the petition is GRANTED. The orders of Judge Reynaldo Roura of 26 March 1996 denying the Motion to Defer Proceedings and of 12 April 1996 denying the motion to reconsider the denial of said Motion to Defer Proceedings, and the orders of respondent Judge Sesanando Villon of 3 May 1996 resetting the arraignment

to 20 May 1998 and of 15 October 1996 denying the Motion to Set Aside Arraignment in Criminal Case No. 96-1667(M) are declared VOID and SET ASIDE. The arraignment of private respondents Mayor Santiago Yabut, Servillano Yabut and Martin Yabut and their separate pleas of not guilty are likewise declared VOID and SET ASIDE. Furthermore, the order of public respondent Secretary of Justice of 1 July 1996 is SET ASIDE and his order of 7 June 1996 REINSTATED.

The Office of the Provincial Prosecutor of Pampanga is DIRECTED to comply with the order (letter) of the Secretary of Justice of 7 June 1996 by forthwith filing with the trial court the amended information for murder. Thereafter the trial court shall proceed in said case with all reasonable dispatch.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug, Panganiban, and Quisumbing, JJ., concur.

[1] Rollo, 90.

[2] Id., 51-52.

[3] Original Record (OR), 9.

[4] Id., 19-21.

[5] OR, 20-21.

[6] Id., 5.

[7] OR, 6.

[8] Id., 7.

[9] Id., 9-18.

[10] OR, 36-50.

[11] OR, 4.

[12] Id., 1.

[13] Id., 33.

[14] OR, 52-53.

[15] Id., 54-56.

[16] Id., 59.

[17] Id., 62.

[18] Id., 63-71.

[19] 151 SCRA 462 [1987].

[20] 176 SCRA 287 [1989].

[21] OR, 78-83.

[22] Id., 92-97.

[23] Id., 100.

[24] Id., 118.

[25] OR, 139-141.

[26] Id., 129-136.

[27] Id., 142-143.

[28] Id., 146-149.

[29] Id., 210.

[30] Id., 150-151.

[31] OR, 224.

[32] Id., 213-215.

[33] Id., 218.

[34] Id., 227-228.

[35] OR, 231-237.

[36] Id., 244.

[37] Id., 247-252.

[38] OR, 250-251.

[39] Id., 253-255.

[40] The YABUTs must have had in mind DOJ Department Order (D.O.) No. 223 dated 30 June 1993 and entitled "1993 Revised Rules on Appeals from Resolutions in Preliminary Investigations/Reinvestigations." Sec. 4 thereof states:

[N]o 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.

[41] OR, 256-257.

[42] Id., 260-265.

[43] Id., 266-269.

[44] OR, 270-273.

[45] Id., 274-275.

[46] OR, 300-301.

[47] Id., 302.

[48] Id., 306-307.

[49] Id., 310-320.

[50] Supra note 43.

[51] OR, 346-362.

[52] Id., 335-337.

[53] Id., 339.

[54] Id., 368-373.

[55] OR, 376-379.

[56] Id., 380.

[57] Id., 382-385.

[58] Id., 386.

[59] Id., 390.

[60] 254 SCRA 307 [1996].

[61] 278 SCRA 656, 676-678 [1997].

[62] The 1987 Revised Administrative Code, Executive Order No. 292.

[63] 235 SCRA 39, 48-49 [1994].

[64] Supra note 19.

[65] Supra note 60.

[66] OR, 100.

[67] OR, 146-149.

[68] Crespo v. Mogul, supra note 19 at 471.

[69] Supra note 63.

[70] United States v. Montaner, 8 Phil. 620, 629 [1907].

[71] United States v. Mamintud, 6 Phil. 374, 376 [1906]; Suarez v. Platon, 69 Phil. 556, 565 [1940]; People v. Esquivel, 82 Phil. 453, 459 [1948]; Crespo v. Mogul, supra note 19; Allado v. Diokno, 232 SCRA 192, 206, 210

[1994].

[72] Supra note 71.

[73] Supra note 71.

[74] Agcaoili v. Ramos, 229 SCRA 705, 711 [1994].

[75] People v. Bedia, 83 Phil. 909, 916 [1949].

[76] Crespo v. Mogul, supra note 19 at 471.

[77] See, e.g., Herras Teehankee v. Director of Prisons, 76 Phil. 756, 773 [1946].

[78] Crespo v. Mogul, supra note 19 at 470, citing People v. Zabala, 58 OG 5028 and Galman v. Sandiganbayan, 144 SCRA 43, 101 [1986].

[79] People v. Court of Appeals, 101 SCRA 450, 467 [1980].

[80] Supra note 78 at 86.

[81] People v. Balicasan, 17 SCRA 1119, 1123 [1966]; People v. Court of Appeals, supra note 79; Galman v. Sandiganbayan, supra note 78 at 89.

[82] People v. Cabero, 61 Phil. 121, 127 [1934]; People v. Gomez, 20 SCRA 293, 298 [1967]; People v. Catolico, 38 SCRA 389, 404 [1971]; Serino v. Zosa, 40 SCRA 433, 438-440 [1971]; People v. Navarro, 63 SCRA 264, 273 [1975]; Silvestre v. Military Commission No. 21, 82 SCRA 10, 18-19 [1978]; People v. Bocar, 138 SCRA 166, 170-171 [1985]; People v. Castañeda, 165 SCRA 327, 343 [1988]; Portugal v. Reantaso, 167 SCRA 712, 720 [1988]; Aquino v. Sison, 179 SCRA 648, 651-652 [1989]; Gorion v. Regional Trial Court of Cebu, Br. 17, 213 SCRA 138, 148 [1992].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.