

APRIL JOY ASETRE, BENJIE EBCAS, GALINZCHEL GAMBOA, AND BUENAVENTURA GAMBOA, PETITIONERS, VS. JUNEL ASETRE, CHARITY DAINE ALAGBAN, COURT OF APPEALS (SPECIAL FORMER EIGHTEENTH DIV...

G.R. No. 171536. April 07, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the Decision[1] dated October 18, 2005 of the Court of Appeals in CA-G.R. SP No. 78493. Said decision had reversed the Resolution[2] dated December 17, 2002 of the Department of Justice (DOJ) which ordered the withdrawal of an information for parricide against petitioner April Joy Asetre and for murder against petitioners Benjie Ebcas, Galinzchel Gamboa and Buenaventura Gamboa.

The facts, based on the findings of the Court of Appeals, are as follows:

On December 27, 2000, Hanz Dietrich Asetre was found dead in his residence, which also housed his printing press business. He was 26 years old.

Petitioner April Joy Gonzaga-Asetre, Hanz's wife, alleged that her husband committed suicide by hanging himself using bedcovers. She said Hanz was depressed, suicidal, a drug dependent, an alcoholic and violent even before they got married. She also claimed that when Hanz got high on drugs and alcohol, he would break things. When his mother contracted cancer, he became despondent, losing concentration in his work as well as lacking sleep at night. Then, after his mother died of cancer, he started writing letters expressing his desire to "follow his mother." He also became depressed because they were left with huge debts and he had to assume payments. It was recommended that Hanz undergo rehabilitation in Cebu City, but he stayed there only for two weeks.[3]

However, respondent Junel Asetre, Hanz's brother, claimed that the mark on Hanz's neck was not that of bedspreads but of a rope. He claimed that petitioner Buenaventura Gamboa knew who killed Hanz, but was reluctant to divulge it lest he be charged or harmed by April's father.

On her part, respondent Charity Asetre-Alagban, Hanz's sister, claimed that Hanz confided to her a few days before his death that April issued checks without his knowledge, and that Hanz died without reconciling his differences with April.[4]

In a Resolution[5] dated October 3, 2001, the Office of the City Prosecutor of Bacolod found probable cause against April, Hanz's first cousins Galinzchel and Buenaventura Gamboa, and printing press worker Benjie Ebcas. The investigating prosecutor held that from the evidence adduced by the parties, herein petitioners were physically and actively interacting with Hanz shortly before he was found dead. Moreover, from the actuations of petitioners and the events that took place, it can be gleaned that they connived in killing Hanz and later tried to cover up the crime. Further, the prosecutor rejected petitioners' "suicide theory" because it is inconsistent with the medico-legal findings that while Hanz might have wanted to end his life, the circumstances of his death proved he

could not have done it himself. The prosecutor explained that the possibility of murder is not negated even if Hanz sustained no wounds or injuries, since he had been drinking shortly before his death which could have rendered him too drunk to be aware that he was being strangled. Thus, the prosecutor recommended that murder charges under Article 248 of the Revised Penal Code[6] be filed against Ebcas and the Gamboas and a parricide charge under Article 246[7] of the Revised Penal Code be filed against April. The cases[8] were filed with the Regional Trial Court (RTC) of Negros Occidental, Branch 50.

Subsequently, on November 26, 2001, the four accused asked the DOJ for a review of the prosecutor's findings.

In a Resolution dated December 17, 2002, DOJ Acting Secretary Ma. Merceditas N. Gutierrez absolved petitioners and reversed the investigating prosecutor's resolution, not because she believed the "suicide theory" of the petitioners, but rather because she did not find sufficient evidence to sustain the theory of the prosecution of "conspiracy to commit murder." Secretary Gutierrez explained that while there is overwhelming proof that Hanz might not have committed suicide, there is no direct or circumstantial evidence that could link petitioners as the authors of the crime. She reasoned in this wise: (1) the prosecution failed to establish petitioners' motive to kill Hanz; (2) the alleged "quarrel incident" of the spouses was not substantiated; (3) April's actuations during the incident should not be taken against her as there is no standard human behavioral response when one is confronted with a strange or frightful experience; (4) even her actuations after the incident, like burning the bed sheets and alleged suicide letters of Hanz, and her opposition to the exhumation/autopsy of Hanz's body because they could only traumatize her and her children, could not cast doubt on April's innocent intentions. An ordinary person like her could believe that the police investigation done at the time of the incident and the initial post-mortem examination on Hanz's body were more than enough to conclude and close the investigation; (5) even the apparent inconsistent testimonies of the other petitioners on their participation during the incident could not be taken against them because witnesses to a stirring incident could see differently some details thereof due in large part to excitement and confusion that such an incident usually brings.

Accordingly, Secretary Gutierrez directed the prosecutor to withdraw the information against petitioners in Criminal Case No. 01-23021. The dispositive portion of the ruling reads:

WHEREFORE, premises considered, the assailed resolution is REVERSED. The City Prosecutor of Bacolod City is hereby directed to withdraw the information filed against April Joy Asetre, Benjie Ebcas, Galinzchel Gamboa and Buenaventura Gamboa for murder in Criminal Case No. 01-23021 and to report the action taken therein within five (5) days from receipt hereof.

SO ORDERED.[9]

Pursuant to the ruling, the prosecutor filed a Motion to Withdraw Information in Criminal Case No. 01-23021, which was granted by the RTC on January 21, 2003.[10] The trial court also recalled the warrant of arrest issued against the accused, and later denied private respondents' motion for reconsideration in an Order[11] dated February 27, 2003.

On June 16, 2003, the DOJ denied[12] the Asetre siblings' motion for reconsideration of the Secretary's Order dated December 17, 2002. Thereafter, respondent Asetres filed a petition for certiorari and mandamus before the Court of Appeals, arguing that the DOJ Secretary acted with grave abuse of discretion in issuing the December 17, 2002 Resolution despite the circumstantial evidence against petitioners.

In its Decision dated October 18, 2005, the appellate court found that the DOJ Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the investigating prosecutor's finding of probable cause. According to the Court of Appeals, the congruence of facts and circumstances of the case strongly shows a reasonable ground of suspicion that crimes of murder and parricide had been committed by the

petitioners. It agreed with the investigating prosecutor that the physical evidence at hand negates the "suicide theory" of petitioners. It further held that the medical findings of the three medical doctors-that it was improbable for Hanz to have committed suicide-were credible, impartial and unbiased. It added that when an information has already been filed in court, the latter acquires jurisdiction over the case until its termination, and any relief desired by any party should be addressed to the trial court. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the petition for certiorari and mandamus is granted. Accordingly, the Resolutions dated December 17, 2002 and June 16, 2003 of the Secretary/Acting Secretary of Justice of the Department of Justice, in Criminal Case No. 01-23021, are hereby REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.[13]

On February 13, 2006, the Court of Appeals denied the petitioners' motion for reconsideration.[14] Hence, the instant petition before us.

Petitioners raise the following issues:

I.

WHETHER THE PURPORTED OPINIONS OF DR. SAMSON GONZAGA, DR. LUIS GAMBOA, AND DR. NICASIO BOTIN, THAT HANZ ASETRE DID NOT COMMIT SUICIDE HAVE SUFFICIENT WEIGHT, AS COMPARED TO THE DIRECT TESTIMONIES OF THE PETITIONERS, THEIR WITNESSES, AND THE CIRCUMSTANTIAL EVIDENCE SHOWING THAT INDEED HANZ ASETRE COMMITTED SUICIDE.

II.

WHETHER THE CONCLUSION OF THE RESPONDENT COURT OF APPEALS, THAT THERE IS PROBABLE CAUSE TO CHARGE PETITIONERS FOR PARRICIDE IS SUPPORTED BY SUFFICIENT EVIDENCE, AND IN ACCORD WITH JURISPRUDENCE AND LAW.

III.

WHETHER THE [CONCLUSION] OF THE RESPONDENT COURT THAT THE SECRETARY OF JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION AND HAS EXCEEDED HIS JURISDICTION IS CORRECT AND IN ACCORDANCE WITH LAW AND PROCEDURE.

IV.

WHETHER THE PETITION FOR CERTIORARI FILED BY PRIVATE RESPONDENTS BEFORE THE RESPONDENT COURT, SHOULD HAVE BEEN DISMISSED CONSIDERING THAT THE REGIONAL TRIAL COURT BR. 50, WAS NOT IMPEADED AND THE INFORMATION WAS ALREADY ORDERED WITHDRAWN, AND SUCH FACT WAS NOT REVEALED BY THE PRIVATE RESPONDENTS IN THEIR PETITION FOR CERTIORARI BEFORE THE COURT OF APPEALS EVEN IN THEIR DISCLAIMER OF FORUM SHOPPING.[15]

Briefly stated, the main issue presented for our resolution is whether the Court of Appeals erred in reversing the ruling of the DOJ Secretary and in finding probable cause to indict petitioners for murder and parricide.

In their brief and memorandum,[16] petitioners insist that the Court of Appeals should not have relied on the opinion of the three medical doctors, who executed affidavits stating that it was improbable that Hanz killed himself, because they are not forensic experts.[17]

Petitioners also argue that there are forensic yardsticks in this case consistent with suicide: total absence of stains, injuries, defense wounds on the bodies of Hanz and petitioners; a chair in the premises where Hanz committed suicide; no sign of struggle in Hanz's body; Hanz attempted suicide twice sometime in the middle of 2000; Hanz wrote letters indicative of his frustrations in life; the material used in hanging was accessible to Hanz; he had a history of reverses in life like drug addiction, losing his mother and financial problems; he was hooked on drugs and he had an unpredictable personality.

They also criticize the appellate court for its failure to specifically point out a portion in the Resolution of the DOJ Secretary that showed that she acted with grave abuse of discretion. They insist that the Secretary of Justice's reversal of the investigating prosecutor's resolution was within her authority as the head of the DOJ.[18] They stress that mere abuse of discretion is not sufficient to justify the issuance of a writ of certiorari as the abuse of discretion must be grave, patent, arbitrary and despotic.[19]

They further aver that after the DOJ Secretary reversed her subordinate prosecutor, the motion to withdraw information filed by the prosecutor was granted by the RTC on January 21, 2003, and private respondents' motion for reconsideration was denied on February 27, 2003. This means that the DOJ Secretary's ruling was not attended with grave abuse of discretion. Petitioners argue that private respondents' failure to question the aforementioned orders should have been fatal to their petition before the appellate court, and private respondents are guilty of forum-shopping for not informing the Court of Appeals that the RTC had already issued an order granting the withdrawal of the information.[20]

In their Memorandum,[21] private respondents argue that the petition, filed under Rule 45 of the Rules of Court, should be limited to questions of law but petitioners raised pure questions of fact. They argue that the evidentiary weight of the opinion of expert witnesses, the weighing of facts to determine probable cause, and the determination of whether there is sufficient evidence to support the same are all factual questions.[22]

They enumerated circumstantial evidence which warrant the finding of probable cause against the petitioners, to wit: (a) the victim died at around 2:00 p.m. on December 27, 2000; (b) the victim was brought to the hospital dead; (c) respondent Junel Asetre was not informed of the victim's death and became aware of it through a friend; (d) at the hospital, April already hired a counsel; (e) Hanz was hurriedly buried on December 29, 2000 even before an autopsy could be conducted and despite the prior request of private respondents for an autopsy; (f) the following day, December 30, 2000, April, despite the request of a police investigator to keep the bedspreads allegedly used by the victim in hanging himself, burned them; (g) she also burned the alleged suicide note of the victim; (h) April objected to the suggestion of private respondents to have the body exhumed to determine the cause of death, and even threatened them with trouble; (i) April and her counsel objected to the authority granted by the city prosecutor to exhume the body and conduct an autopsy; (j) when private respondents filed a petition in court for the exhumation of the body, April objected; (k) when the petition was granted, April filed a multi-million damage suit before the RTC against private respondents and the NBI agents who conducted the examination, although the case against the NBI agents was later withdrawn by April; (l) April also filed a criminal case, which was later dismissed, against private respondents and the NBI agents before the city prosecutor's office for exhuming the victim to determine the cause of death; (m) she also filed another case, which was also dismissed, against the NBI agents before the Office of the Ombudsman; (n) petitioners went into hiding after the information was filed; (o) the first to arrive at the crime scene were the policemen of Bago City where April's father was vice mayor at the time of the incident, and not the policemen of Bacolod City; (p) the suicide theory was debunked by the NBI medico-legal officer, the investigating prosecutor and the acting Secretary of Justice as it was contrary to physical evidence; (q) all the petitioners were present at the scene shortly before, during, and after the victim died and they were the last persons seen with the victim.[23]

After serious consideration of the circumstances in this case, we are agreed that the petition is impressed with merit.

A preliminary investigation falls under the authority of the state prosecutor who is given by law the power to direct and control criminal actions. He is, however, subject to the control of the Secretary of Justice. Thus, Section 4, Rule 112 of the Revised Rules of Criminal Procedure provides:

SEC. 4. Resolution of Investigating Prosecutor and its Review. —...

x x x x

If upon petition by a proper party under such Rules as the Department of Justice may prescribe or motu proprio, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

The Secretary of Justice, upon petition by a proper party, can reverse his subordinates' (provincial or city prosecutors and their assistants') resolutions finding probable cause against suspects of crimes.[24] The full discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of information rests with the executive branch. Hence, judicial review of the resolution of the Secretary of Justice is limited to a determination whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction. Courts cannot substitute the executive branch's judgment.[25]

Grave abuse of discretion is defined as "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." [26]

The determination of probable cause to warrant the prosecution in court should be consigned and entrusted to the DOJ, as reviewer of the findings of the public prosecutors; to do otherwise is to usurp a duty that exclusively pertains to an executive official.[27]

As department head, the Secretary of Justice has the power to alter, modify, 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. While it is the duty of the fiscal to prosecute persons who, according to evidence received from the complainant, are shown to be guilty of a crime, the Secretary of Justice is likewise bound by his oath of office to protect innocent persons from groundless, false or serious prosecutions. He would be committing a serious dereliction of duty if he orders or sanctions the filing of charge sheets based on complaints where he is not convinced that the evidence would warrant the filing of an action in court. He has the ultimate power to decide which as between the conflicting theories of the parties should be believed.[28] The Secretary is empowered to order or perform the very acts questioned in this case.[29]

In *Joaquin, Jr. v. Drilon*, [30] this Court affirmed the DOJ Secretary's power of control over the authority of a state prosecutor to conduct preliminary investigations on criminal actions. Thus, we held:

In reviewing resolutions of prosecutors, the Secretary of Justice is not precluded from considering errors, although unassigned, for the purpose of determining whether there is probable cause for filing cases in court. He must make his own finding of probable cause and is not confined to the issues raised by the parties during

preliminary investigation. Moreover, his findings are not subject to review unless shown to have been made with grave abuse.[31]

It is only where the decision of the Justice Secretary is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction that the Court of Appeals may take cognizance of the case in a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure. The Court of Appeals decision may then be appealed to this Court by way of a petition for review on certiorari.[32]

In this case, however, the Secretary of Justice committed no grave abuse of discretion. Based on the totality of the evidence presented by both parties, it is clear that there is a dearth of proof to hold petitioners for trial.

The disquisition of the Secretary of Justice deserves more credence than that of the Court of Appeals, because of the following reasons:

First, Dr. Samson Gonzaga, the private physician who signed the death certificate, and Dr. Luis Gamboa, the medico-legal officer of Bacolod City who conducted the post-mortem autopsy on Hanz's body, are not expert witnesses, nor were they offered to testify as medico-legal experts. Dr. Nicasio Botin, medico-legal officer, NBI-Iloilo City, who prepared the exhumation report is also not a forensic expert. They never opined that it was improbable for the deceased to have committed suicide. The death certificate signed by Dr. Gonzaga indicated "asphyxia secondary to strangulation" as the cause of death, without explaining whether it was suicide or not. It pointed to "depression" as the antecedent cause, implying that Hanz committed suicide. Thus, the appellate court lacks sufficient basis to conclude that it was "improbable" for Hanz to commit suicide based on the opinions of the three doctors.

Dr. Gamboa's post-mortem findings, we note, also did not categorically state foul play as the cause of death:

x x x x

- Q: Was the death of HANZ DIETRICH ASETRE, based on your findings, suicidal or there was (sic) foul play?

A: I cannot determine that but based on my findings the cause of death was strangulation.[33]

x x x x

Second, we note also that while there is physical evidence to buttress private respondents' assertion that there was foul play, that evidence is inconclusive. The ligature that was seen on December 27 or 28, 2000 was no longer the same ligature seen on March 1, 2001. Since Hanz was obese, the entire ligature will not be very conspicuous. Further, the absence of an upward direction ligature did not necessarily mean that Hanz was strangled. If the bedsheet was tightly wound around Hanz's neck, it is possible that there will be no room for the bedsheet to form an upward direction ligature because of the fatty folds in the skin of Hanz at his neck.

Third, the finding that there was conspiracy to kill Hanz is not supported by any evidence on record and hence must be discarded.

Under Article 8[34] of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy must be proven during trial with the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.[35]

The Bacolod City Prosecutor's Office, in this case, ruled that conspiracy can be deduced from petitioners'

actuations before, during and after the incident, pointing to a joint purpose of killing Hanz: they were physically and actively interacting with Hanz shortly before he was found dead; they tried to cover up the crime by narrating stories which border on the "impossible to the bizarre;" nowhere in their counter-affidavits is it stated that Hanz had gone wild when drinking Tanduay that day; Hanz was very quiet at the children's room and even partook lunch with his cousins; it was unusual for April to call a specific person to pacify Hanz who had allegedly gone wild earlier on the day he died, and unusual for her not to shout for help when she saw Hanz hanging; if she was shocked, her voice could have impelled other people to immediately come upstairs and respond; but it was only Ebcas who came up; Buenaventura Gamboa came up later only when told to call for a taxi; the other employees just continued with their work as if nothing unusual was happening. The Bacolod City Prosecutor's Office further ruled that April, as the widow, should have demanded full and exhaustive investigation surrounding Hanz's death to put an end to the questions and speculations on the real cause of death. Also, according to said office, her reason in opposing the exhumation, e.g., that her prior consent was not secured, is flimsy.

All circumstances considered, we find that the DOJ Secretary correctly held that the circumstantial evidence presented by private respondents to prove probable cause against petitioners, does not support the theory of conspiracy to commit murder. Such circumstantial evidence in our view, would not sufficiently warrant a conclusion that private respondents are responsible for the death of Hanz. Petitioners' mere presence at the death scene, without more, does not suffice to establish probable cause against them. It is noteworthy that complainants failed to establish conclusively that April, Hanz's cousins, and his workers had an ax to grind against Hanz. The alleged quarrel of the couple the night before the incident is hearsay and could not establish enough credible motive on the part of April, contrary to the opinion of the investigating prosecutor, because the same witness who testified about the alleged fight also stated that the couple had a good relationship and that it was not unusual for the couple to have verbal altercations occasionally. Equally worth stressing is the positive proof that the accused were not the only persons present inside the couple's house; and that the door of the gate of the house, including the door of the room where the victim was found hanging, were not so well secured as to exclude the possibility that the act was committed by other persons who were also then present in the house, or even by intruders. April was not attempting to reduce the number of possible witnesses as stated by the investigating prosecutor when she sent her children to Iloilo as it was the victim's decision to send their children to Iloilo upon his cousin's invitation. Likewise, concerning the act of burning the bedsheets, we find no grave abuse of discretion in the ruling of the DOJ that an ordinary person like April could have believed that the police investigation made at the death scene and the post-mortem examination conducted on the body of the victim were already more than enough to conclude and close the investigation. Thus, we find no grave abuse of discretion on the part of the Secretary of Justice.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated October 18, 2005 in CA-G.R. SP No. 78493 is REVERSED and the Resolution dated December 17, 2002 of the Department of Justice is AFFIRMED.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 127-138. Penned by Executive Justice Mercedes Gozo-Dadole, with Associate Justices Pampio A. Abarintos and Enrico A. Lanzanas concurring.

[2] CA rollo, pp. 292-306.

[3] Id. at 585-586.

[4] Id. at 43-49.

[5] Rollo, pp. 92-112.

[6] ART. 248. Murder. – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
- In consideration of a price, reward or promise;
- By means or inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity;
- With evident premeditation;
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

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

[8] Criminal Case No. 01-23021.

[9] Rollo, pp. 124-125.

[10] Id. at 181.

[11] Id. at 182.

[12] Id. at 229-230.

[13] Id. at 138.

[14] Id. at 140-141.

[15] Id. at 283-284.

[16] Id. at 272-362.

[17] Id. at 25-32.

[18] Id. at 67-69; 71; 73-76.

[19] Id. at 77-78.

[20] Id. at 81-83.

[21] Id. at 223-250.

[22] Id. at 233.

[23] Id. at 241-244.

[24] See *Webb v. Secretary of Justice*, G.R. No. 139120, July 31, 2003, 407 SCRA 532, 540.

[25] See *Metropolitan Bank and Trust Company v. Tonda*, G.R. No. 134436, August 16, 2000, 338 SCRA 254, 270-271; *RCL Feeders PTE., Ltd. v. Perez*, G.R. No. 162126, December 9, 2004, 445 SCRA 696, 705-706.

[26] *D.M. Consunji, Inc. v. Esguerra*, G.R. No. 118590, July 30, 1996, 260 SCRA 74, 82.

[27] See *Roberts, Jr. v. Court of Appeals*, G.R. No. 113930, March 5, 1996, 254 SCRA 307, 349 (Separate Opinion of Chief Justice Andres Narvasa).

[28] See *Vda. de Jacob v. Puno*, No. L-61554-55, July 31, 1984, 131 SCRA 144, 148-149; *Jalandoni v. Drilon*, G.R. Nos. 115239-40, March 2, 2000, 327 SCRA 107, 117-118.

[29] *Marquez v. Alejo*, No. L-40575, September 28, 1987, 154 SCRA 302, 307.

[30] G.R. No. 108946, January 28, 1999, 302 SCRA 225.

[31] Id. at 232.

[32] *Torres, Jr. v. Aguinaldo*, G.R. No. 164268, June 28, 2005, 461 SCRA 599, 612.

[33] *Rollo*, p. 144.

[34] ART. 8. Conspiracy and proposal to commit felony. – Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

[35] *Preferred Home Specialties, Inc. v. Court of Appeals*, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 414-415.

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