

HEIRS OF THE LATE NESTOR TRIA, PETITIONERS, VS. ATTY. EPIFANIA OBIAS, RESPONDENT.

G.R. No. 175887. November 24, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision[1] dated August 14, 2006 and Resolution[2] dated December 11, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 86210. The CA denied the petition for mandamus/certiorari filed by the petitioners which assailed the Order[3] dated March 24, 2004 of the Office of the President (OP) dismissing the murder charge against the respondent.

The factual antecedents are as follows:

On May 22, 1998, at around 10:00 o'clock in the morning at the Pili Airport in Camarines Sur, Engr. Nestor Tria, Regional Director of the Department of Public Works and Highways (DPWH), Region V and concurrently Officer-In-Charge of the 2nd Engineering District of Camarines Sur, was shot by a gunman while waiting to board his flight to Manila. He was brought to a hospital but died the following day from the lone gunshot wound on his nape. Subsequently, the incident was investigated by the National Bureau of Investigation (NBI).

On July 31, 1998, NBI Regional Director Alejandro R. Tenerife, Chairman of Task Force Tria, recommended to the Provincial Prosecutor of Camarines Sur the indictment of Roberto "Obet" Aclan y Gulpo, Juanito "Totoy" Ona y Masalonga and Atty. Epifania "Fanny" Gonzales-Obias, for the murder of Engr. Tria.

On the basis of statements given by twenty-six (26) individuals, autopsy and ballistic examination reports, and relevant documents gathered,[4] the NBI submitted its findings, as follows:

Our investigation disclosed that about two weeks before the incident ACLAN and ONA had been conducting an almost daily stakeout at the DPWH 2nd Engineering District of Camarines Sur in Sta. Elena, Iriga City where Regional Director TRIA was holding office from time to time as District Engineer in concurrent capacity. Alternately ACLAN and ONA would ask the security guard on duty if Director TRIA had already arrived and the usual days and time of his coming to the office. At noontime or early afternoon, after waiting vainly for TRIA's arrival, the duo would leave, riding tandem on a red motorcycle. During their surveillance it was ONA who frequently sat on the couch at the lobby of the Engineering Building while ACLAN was waiting near their motorcycle at the parking space. At times ONA would approach ACLAN to whisper a message and the latter would relay the message to someone else through a hand-held radio. There were also some instances when ACLAN would wait at the lobby while ONA was staying near the parked motorcycle. At one instance an employee had noticed a gun tucked on the waistline of ACLAN.

Around 8:00 o'clock in the morning of May 22, 1998, ACLAN and ONA were spotted in their usual places at the 2nd Engineering District in Iriga City. ONA was wearing a loose, yellow long sleeved shirt, maong pants and a pair of sneakers; ACLAN was in a white and gray striped shirt and a pair of maong pants. Shortly before 9:00 a.m. on that day, THEO RUBEN CANEBA, a DPWH employee and newly elected Municipal Councilor

of Buhi, Camarines Sur, arrived. He was warmly greeted and congratulated by his former co-employees outside the engineering building. It was at this point when CANEBA noticed a man about 5'4" in height, sturdy, with semi-curly hair, wearing a white and gray-striped shirt with maong pants and about 40 years old. The man (later identified through his photograph as ROBERTO ACLAN) was looking intensely at him and was shifting position from left to right to get a better view of him. Obviously, ACLAN was trying to figure out whether CANEBA was Director TRIA. After about 20 minutes, Administrative Officer JOSE PECUNDO announced to those who had some documents for signature of Director TRIA to proceed to Pili Airport where TRIA would sign them before leaving for Manila. Upon hearing this, ACLAN and ONA left hurriedly on board a red motorcycle. No sooner had ACLAN and ONA left that CANEBA cautioned the guards to be extra alert because he had some sense of foreboding about that man (referring to ACLAN).

Shortly after 10:00 a.m. on that day, Director TRIA arrived at the Airport. After signing some documents at the parking lot he proceeded towards the pre-departure area on the second floor of the airport building. ONA, who was waiting on the stairway, immediately followed TRIA as the latter was going up the stairs. As TRIA was approaching the pre-departure area he was met by Atty. [E]PIFANIA OBIAS who shook his hands and started conversing with him. It was at this juncture that a gunshot rang out and TRIA dropped like a log on the floor, bleeding profusely from a gunshot wound at the back of his head. As a commotion ensued, ONA was seen running down the stairway while tucking a gun on his waistline. Even before ONA could come out of the doorway, ACLAN was already outside the building, pointing a handgun at everybody - obviously to discourage any attempt of pursuit - while swiftly stepping backward to where their motorcycle was parked. He then fired shots at an army man who tried to chase ONA. The army man, who was then unarmed, sought cover behind a parked van. ACLAN and ONA then boarded a red motorcycle and sped away. Director TRIA died from a lone gunshot wound on his nape at the Mother Seton Hospital in Naga City the following day.

Atty. EPIFANIA OBIAS, on the other hand, admitted that she was with ROBERTO "OBET" ACLAN in the early morning of May 22, 1998; that at about 7:00 a.m. on that day she went to the residence of Director TRIA at Liboton, Naga City, had a brief talk with the latter and left immediately. She also volunteered the information that ROBERTO ACLAN was not the gunman who had fired the fatal shot at Director TRIA. She was also the last person seen talking with Director TRIA when the latter was gunned down. A practicing lawyer, Atty. OBIAS also engages herself in real estate business on the side. In 1997 she had brokered a sale of real estate between and among spouses PRUDENCIO and LORETA JEREMIAS, as Vendors, and Spouses NESTOR and PURA TRIA, as Vendees, over a .9165 hectare of land in Balatas, Naga City. It was Atty. OBIAS who received, for and in behalf of the vendors, the full payment of P2.8 Million of the sale from the TRIAs with the agreement that Atty. OBIAS would take care of all legal processes and documentations until the Deed of Absolute Sale is delivered to the TRIA family. After the death of TRIA, the surviving spouse and heirs made several attempts to contact Atty. OBIAS to demand immediate delivery of the deed of sale, but the latter deliberately avoided the TRIA family and, despite verbal and written demands, she failed and refused, as she still fails and refuses, to fulfill her legal obligation to the TRIA family. At one instance, a representative of the TRIA family had chanced upon Atty. OBIAS at her residence and demanded of her to deliver the deed of sale to the TRIA family immediately. But Atty. OBIAS replied that Director TRIA had already disposed of the property before his death, a claim that can no longer be disputed by Director TRIA as his lips had already been sealed forever, except for the fact that neither the surviving spouse nor anyone of the heirs had given any consent to the purported subsequent sale.

During the lifetime of Director TRIA, Atty. OBIAS was one of the frequent visitors of the TRIA family and had been known to the family members as a friend and a close associate of Director TRIA. Yet, she never attended the wake of Director TRIA nor made any gesture of sympathy or condolence to the TRIA family up to the present time. [5]

During the preliminary investigation conducted by the Office of the Provincial Prosecutor, respondent filed her Counter-Affidavit denying that she was in anyway involved with the killing of Engr. Tria. Respondent admitted

that Engr. Tria was a longtime friend and that she went to his residence at about 7:30 o'clock in the morning of May 22, 1998. Since Engr. Tria had many visitors at that time, they just agreed to see each other at the airport later. Respondent denied having admitted to NBI Supervising Agent (SA) Atty. Manuel Eduarte that she was with Aclan then, and neither did she volunteer the information that Aclan was not the triggerman. Respondent submitted the sworn statement of Edgar Awa, one of those witnesses interviewed by the NBI, who declared that Aclan and Ona were at the Iriga City DPWH Office in the morning of May 22, 1998 at 8:00 o'clock in the morning. Such is also corroborated by the sworn statement of another NBI witness, Theo Ruben Caneba, who declared that when he arrived at the DPWH Iriga office at about 8:30 o'clock in the morning of May 22, 1998, he noticed the presence of Aclan who was supposedly eyeing him intensely, and that after it was announced that those who have some transactions with Engr. Tria should just proceed to the airport, Caneba saw Aclan with a companion later identified as Ona, immediately left the compound in a motorcycle.[6]

Respondent likewise denied that she met Engr. Tria as the latter was approaching the pre-departure area of the airport and that she supposedly shook his hands. The truth is that when she and Engr. Tria met at the airport, the latter took her by the arm and led her to a place where they talked. Respondent asserted that from the totality of evidence gathered by the NBI, it has not established prima facie the existence of conspiracy as to implicate her in the death of Engr. Tria.[7]

On July 2, 1999, the Office of the Provincial Prosecutor of Camarines Sur issued a resolution[8] directing the filing of an information for murder against Aclan and Ona but dismissing the case for insufficiency of evidence as against herein respondent, Atty. Epifania Obias.

Petitioners appealed to the Department of Justice (DOJ) assailing the Provincial Prosecutor's order to dismiss the charge against respondent.[9] On January 25, 2000, then Justice Secretary Serafin Cuevas issued a Resolution[10] modifying the July 2, 1999 resolution of the Provincial Prosecutor and directing the latter to include respondent in the information for murder filed against Aclan and Ona.

The DOJ agreed with the contention of petitioners that there is interlocking circumstantial evidence sufficient to show that respondent conspired with Aclan and Ona in the killing of Engr. Tria. It cited the following circumstances: (1) Despite respondent's admission regarding her friendship and close association with Engr. Tria, her visit at his house early morning of the same day, and her presence at the airport where she met Engr. Tria and was the person last seen with him, respondent never lifted a finger to help Engr. Tria when he was gunned down and neither did she volunteer to help in the investigation of Engr. Tria's murder nor visit the grieving family to give her account of the fatal shooting of Engr. Tria, which behavior negates her claim of innocence; (2) In the sworn statement of NBI SA Manuel Eduarte, he declared that respondent admitted to him that she and Aclan were together when she went to the residence of Engr. Tria at 7:30 in the morning of May 22, 1998 and that while she later denied such admission and explained that Aclan could not have been with her as the latter was at the DPWH Regional office at about 8:00 a.m., such does not render impossible the fact of Aclan's presence at the residence of Engr. Tria considering that the time given was mere approximation by respondent not to mention the possibility that Aclan could have easily gotten to the DPWH office after coming from the house of Engr. Tria using the same motorcycle which Aclan used as get-away vehicle at the airport; (3) SA Eduarte's statement cannot be simply disregarded as he had no ill motive to impute upon respondent the said admission; and (4) The double sale of the property wherein the Tria spouses already paid P2.8 million to respondent who brokered the sale, only to sell it to another buyer for P3.3 million, without turning over to the Tria family the deed of sale and her failure to attend to the registration of the land in the name of the Tria spouses - this strongly establishes the fact that respondent had the strongest motive to have Engr. Tria murdered by Aclan and Ona who were obviously guns for hire. Also mentioned was the respondent's representation of Aclan as the latter's defense lawyer in a frustrated murder case

which was dismissed. Such client-lawyer relationship could have spawned respondent's ascendancy over Aclan.[11]

The DOJ was thus convinced that the sequence of events and respondent's conduct before, during and after the killing of Engr. Tria undeniably points to her complicity with Aclan and Ona. Moreover, it pointed out that respondent's defense consisted merely of denial which cannot prevail over the positive allegations of witnesses showing her complicity with the gunmen in the perpetration of the crime.[12]

Respondent along with Aclan and Ona filed a motion for reconsideration of the DOJ's January 25, 2000 resolution.[13] On February 18, 2000, Justice Secretary Artemio G. Tuquero issued a directive to State Prosecutor Josefino A. Subia who was the Acting Provincial Prosecutor of Camarines Sur, to defer, until further orders, the filing of the information for the inclusion of respondent, in order not to render moot the resolution of the motion for reconsideration of the January 25, 2000 resolution.[14]

On September 17, 2001, then Justice Secretary Hernando B. Perez issued a resolution denying respondent's motion for reconsideration.[15]

In the meantime, the information charging Aclan and Ona has already been filed with the Regional Trial Court (RTC) of Pili, Camarines Sur. Upon request however, the venue was transferred to the RTC Quezon City by resolution of this Court in A.M. No. 00-3145-RTC.[16]

Sometime in October 2001, the prosecution filed with the RTC Quezon City a Motion to Admit Amended Information to include respondent as one of the accused for the murder of Tria.[17]

On October 8, 2001, respondent filed a Notice of Appeal with the DOJ under the provisions of Administrative Order No. 18, series of 1987.[18] In a letter dated December 3, 2001 addressed to respondent's counsel, the DOJ denied respondent's notice of appeal on the ground that pursuant to Memorandum Circular No. 1266 dated November 4, 1983, as amended by Memorandum Circular No. 58 dated June 30, 1993, appeals to the OP where the penalty prescribed for the offense charged is "reclusion perpetua to death," shall be taken by petition for review.[19] Respondent filed a motion for reconsideration of the denial of her notice of appeal.[20]

It appears that on January 28, 2002, the RTC Quezon City issued an order admitting the amended information which includes respondent. The latter then filed with the RTC a Motion for Reconsideration with Prayer for the Suspension of the Issuance of a Warrant of Arrest dated February 28, 2002, a copy of which was furnished to the Legal Office of the OP on March 6, 2002.[21]

On February 6, 2002, the DOJ denied respondent's motion for reconsideration stating that the proper procedure is the filing of an appeal or petition for review with the OP and not before the DOJ. Hence, the case was considered closed and terminated.[22] However, the DOJ directed the Provincial Prosecutor to forward the records of the case to the OP in compliance with the Order dated October 18, 2001 of Deputy Executive Secretary Jose Tale.[23] It turned out that respondent filed on October 1, 2001 a notice of appeal before the OP (O.P. Case No. 01-J-118).[24]

On June 27, 2003, Senior Deputy Executive Secretary Waldo Q. Flores adopted the findings of facts and conclusions of law in the appealed Resolutions dated January 25, 2000 and September 17, 2001 of the DOJ, and affirmed the same.[25] Respondent filed a motion for reconsideration on September 17, 2003.[26] On December 3, 2003, respondent filed a Supplemental Pleading and Submission of Newly Discovered Evidence.[27]

In his Order dated March 24, 2004, Presidential Assistant Manuel C. Domingo granted respondent's motion for reconsideration and reversed the DOJ resolutions. It was held that mere close relationship without any

corroborative evidence showing intent to perpetrate the crime is not enough probable cause. The conclusion that respondent was the only one interested in the death of Engr. Tria because of the double sale from which respondent supposedly wanted to get away from her obligation to the Tria spouses, was based merely on the opinion of SA Eduarte. Also, since Mrs. Pura Tria admitted she knew of the said transaction, she could very well file a civil case for collection such that even with the death of Engr. Tria, respondent will not be able to evade her obligation. As to the presence of both Aclan and respondent at the house of Engr. Tria early morning before the incident took place, the same was not sufficiently established, as shown by the affidavit of Felix Calayag. The OP thus concluded there was no interlocking circumstantial evidence of respondent's acts before, during and after the killing of Engr. Tria that would establish conspiracy among Aclan, Ona and respondent to commit the crime. Accordingly, the case against respondent was dismissed for insufficiency of evidence.[28]

Petitioners filed a motion for reconsideration[29] which was denied by the OP in its Order[30] dated June 10, 2004. Before the CA, petitioners filed a petition for mandamus/certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

On August 14, 2006, the CA rendered the assailed Decision denying the petition. On the issue of the alleged grave abuse committed by the OP in modifying the findings of the DOJ instead of ordering the Secretary of Justice to reopen/review the case in accordance with Memorandum Circular No. 58, the CA held that it was not mandatory for the OP to do so. As for the evaluation of factual matters and credence to be accorded to the testimonies of respondent and her witnesses, the CA declared that these are not proper grounds in a petition for certiorari which is confined only to the correction of errors of jurisdiction. Neither will mandamus lie to compel the performance of a discretionary duty in view of the failure of petitioners to show a clear and certain right to justify the grant of relief.[31]

Their motion for reconsideration having been denied by the CA, petitioners are now before us contending that the CA manifestly overlooked relevant facts which, if properly considered, would justify a different conclusion. They maintain that the CA decision is contrary to law and established jurisprudence.

Petitioners argue that since the preliminary investigation and review of the resolution finding probable cause have already been terminated years before respondent's appeal to the OP -- more so with the earlier denial of the said appeal for failing to raise any new issue not raised before the DOJ -- the alleged new affidavits should have been referred to the DOJ for reinvestigation. As to the affidavits of Calayag and Jennis Nidea, said witnesses have not been confronted by the petitioners in violation of the latter's right to due process. Thus, the CA decision affirmed the OP's dismissal of the case against respondent at the level of the DOJ without referral to the said office and without consideration of the pendency of the case at RTC of Quezon City, Branch 76. Lacking such authority on appeal to appreciate newly submitted affidavits of Calayag and Nidea, Presidential Assistant Manuel C. Domingo arrogated unto himself the judicial task of analyzing the said documents without confrontation of the witnesses by the other party. Further, the CA overlooked the fact that such affidavits submitted by respondent as newly discovered evidence was merely a ploy in order for her appeal to qualify as raising new and material issues which were supposedly not raised before the DOJ.[32]

Petitioners further argue that the CA should not have affirmed the OP's dismissal of the murder charge against the respondent pursuant to *Crespo v. Mogul*[33] that once an information has been filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court.

On the procedural issue raised by the petitioners, we hold that the OP did not err in taking cognizance of the appeal of respondent, and that the CA likewise had jurisdiction to pass upon the issue of probable cause in a petition challenging the OP's ruling.

Memorandum Circular No. 58[34] provides:

x x x x

No appeal from or petition for review of decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by reclusion perpetua to death wherein new and material issues are raised which were not previously presented before the Department of Justice and were not ruled upon in the subject decision/order/resolution, in which case the President may order the Secretary of Justice to reopen/review the case, provided, that, the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution/order/decision, and provided further, that, the appeal or petition for review is filed within thirty (30) days from such notice.

Henceforth, if an appeal or petition for review does not clearly fall within the jurisdiction of the Office of the President, as set forth in the immediately preceding paragraph, it shall be dismissed outright and no order shall be issued requiring the payment of the appeal fee, the submission of appeal brief/memorandum or the elevation of the records to the Office of the President from the Department of Justice.

If it is not readily apparent from the appeal or petition for review that the case is within the jurisdiction of the Office of the President, the appellant/petitioner shall be ordered to prove the necessary jurisdictional facts, under penalty of outright dismissal of the appeal or petition, and no order to pay the appeal fee or to submit appeal brief/memorandum or to elevate the records of the case to the Office of the President shall be issued unless and until the jurisdictional requirements shall have been satisfactorily established by the appellant/petitioner.

x x x x (Emphasis supplied.)

The offense for which respondent was charged is punishable by reclusion perpetua to death, which is clearly within the jurisdiction of the OP in accordance with Memorandum Circular No. 58. Respondent's appeal was initially dismissed when Senior Deputy Executive Secretary Waldo Q. Flores issued the Resolution dated June 27, 2003 affirming in toto the appealed resolutions of the Secretary of Justice and adopting the latter's findings and conclusions. However, subsequent to her filing of a motion for reconsideration of the said June 27, 2003 Resolution, respondent filed a Supplemental Pleading and Submission of Newly Discovered Evidence. The arguments of respondent in support of her motion for reconsideration were duly considered by the OP in reexamining the appealed resolutions. As the word "may" in the second paragraph of Memorandum Circular No. 58 signifies, it is not mandatory for the President to order the DOJ to reopen or review respondent's case even if it raised "new and material issues" allegedly not yet passed upon by the DOJ. Hence, the OP acted well within its authority in reexamining the merits of respondent's appeal in resolving the motion for reconsideration.

In arguing that the CA gravely abused its discretion when it affirmed the OP's dismissal of the murder charge against respondent, petitioner invoked our ruling in *Crespo v. Mogul* that any disposition of the case rests on the sound discretion of the court once an information has been filed with it.

A refinement of petitioners' understanding of the *Crespo* ruling is in order. In *Crespo*, we ruled that after the information has already been filed in court, the court's permission must be secured should the fiscal find it proper that reinvestigation be made. Thereafter, the court shall consider and act upon the findings and recommendations of the fiscal.

In *Ledesma v. Court of Appeals*,^[35] we clarified that the justice secretary is not precluded from exercising his power of review over the investigating prosecutor even after the information has already been filed in court. However, the justice secretary's subsequent resolution withdrawing the information or dismissing the case does

not cause the court to lose jurisdiction over the case. In fact, the court is duty-bound to exercise judicial discretion and its own independent judgment in assessing the merits of the resulting motion to dismiss filed by the prosecution, to wit:

When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, the bounded duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts. A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action. (Underscoring supplied.)

Further, it is well within the court's sound discretion to suspend arraignment to await the result of the justice secretary's review of the correctness of the filing of the criminal information.[36] There are exceptional cases, such as in *Dimatulac v. Villon*[37] wherein we have suggested that it would have been wiser for the court to await the justice secretary's resolution before proceeding with the case to avert a miscarriage of justice. Evidently however, this is not a hard and fast rule, for the court has complete control over the case before it.

Petitioners' argument that the non-referral by the OP to the DOJ of the appeal or motion for reconsideration filed by the respondent had deprived them of the opportunity to confront and cross-examine the witnesses on those affidavits belatedly submitted by the respondent is likewise untenable. Under the procedure for preliminary investigation provided in Section 3, Rule 112 of the Revised Rules of Criminal Procedure, as amended,[38] in case the investigating prosecutor conducts a hearing where there are facts and issues to be clarified from a party or witness, "[t]he parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned." [39] Hence, the non-referral by the OP to the DOJ of the motion for reconsideration of respondent, in the exercise of its discretion, did not violate petitioners' right to due process.

In resolving the issue of whether the CA gravely abused its discretion in affirming the OP's reversal of the ruling of the Secretary of Justice, it is necessary to determine whether probable cause exists to charge the respondent for conspiracy in the murder of Engr. Tria.

A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. The decision whether or not to dismiss the criminal complaint against respondent is necessarily dependent on the sound discretion of the investigating prosecutor and ultimately, that of the Secretary of Justice.[40]

The findings of the prosecutor with respect to the existence or non-existence of probable cause is subject to the power of review by the DOJ. Indeed, the Secretary of Justice may reverse or modify the resolution of the prosecutor, after which 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.[41] Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction.

However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice,[42] or to avoid

oppression or multiplicity of actions.[43]

In reversing the DOJ's finding of probable cause, the OP found merit in the argument of the respondent that the DOJ's finding that she was with Aclan when she went to the residence of Engr. Tria early in the morning of May 22, 1998, was not sufficiently established. The OP gave more weight to the affidavit[44] of Calayag (attached to respondent's supplemental pleading on motion for reconsideration) -- stating that Aclan was not around when they and respondent, among other visitors, were at Engr. Tria's house at that time -- than that account given by SA Eduarte which was uncorroborated. As to the double sale allegedly committed by the respondent from which the latter's strong motive to liquidate Engr. Tria was inferred, the OP found this as a mere expression of opinion by the investigators considering that Engr. Tria's widow, Mrs. Pura Tria, categorically admitted her knowledge of the said transaction. Neither was the OP persuaded by the NBI's "kiss of death" theory since it is but a customary way of greeting a friend to shake hands and hence it cannot imply that respondent utilized this as a signal or identification for the gunman to shoot Engr. Tria. Respondent's alleged indifference immediately after Engr. Tria was gunned down while conversing with her, was also negated by the affidavit of an employee of Philippine Air Lines based at the Pili Airport, stating that right after the incident took place he saw respondent in the radio room in shock and was being given water by another person.

Considering the totality of evidence, the OP was convinced there was nothing suspicious or abnormal in respondent's behavior before, during and after the fatal shooting of Engr. Tria as to engender a well-founded belief of her complicity with the killing of Engr. Tria, thus:

The act of Obias in failing to help the deceased when the latter was shot should not be taken against her. In a tragic moment such as the incident, it is safe to assume that one could be overtaken by shock, grief or fear especially if the one involved is an acquaintance or a friend, leaving the former unable to act or think properly. Obias could have been overtaken by shock or grief making her body unable to function or think properly.

Moreover, the act of Obias in failing to contact or to visit the family of the deceased during the wake of the latter should not be taken against her. With rumors circulating that she is a possible primary suspect over the death of Engr. Tria, and to avoid any unnecessary confrontation with the family of the latter, whose emotions could be uncontrollable or animated by anger or revenge, Obias' act in keeping her silence and distance is permissive.

The behavior of Obias before, during and after the incident should not be taken against her. It is worthy to note that Obias was confronted with extraordinary situations or circumstances wherein a definite or common behavior could not be easily formulated or determined. One's behavior or act during said extraordinary situations should not prejudice the actor if the latter failed to act or behave in such a manner acceptable to all or which, upon reflection afterwards, could be deemed the more appropriate, common or acceptable reaction.

Obias' actions could be presumed common or acceptable considering the attendant circumstances surrounding the same, and they do not evince or show any malice or intent whatsoever.[45]

The relevant portion of SA Eduarte's affidavit reads:

3. That our first meeting was on or about 10:00 AM of May 25, 1998 at our office. She was accompanied by a certain RODEL who was introduced as her Office Assistant. On said meeting she verbally admitted the fact that she was the last person conversing with Dir. Tria when shot at the airport on or about 10:20 AM of May 22, 1998; that the shooting took place even before her first step after their short talk, but she could not identify the assailant/s because she had blacked out or became senseless because of fear;

4. That our second meeting was on or about 11:20 AM of May 28, 1998 at our office and she was alone then. That she stood pat on her claim that she was overwhelmed with fear and became oblivious of her surroundings after the gunshot that hit Dir TRIA. When asked about the veracity of the information that she was seen at

TRIA's residence at Molave St., Liboton, Naga City, Atty. Obias admitted that she was indeed at the residence of Director TRIA at around 7:30 AM of May 22, 1998, claiming her visit as official matter, she being the lawyer of the victim in some cases;

5. That finally we met on or about 5:00 PM of June 1, 1998 at the restaurant of Villa Caceres Hotel, Magsaysay Avenue, Naga City, upon arrangement made by our former Assistant Regional Director FRANCISCO "FRANK" OBIAS of NBI (now retired) and father-in-law of Atty. FANNY OBIAS; That said meeting materialized when on the morning of the said date, Atty. FRANK OBIAS visited me at the office asking why her daughter-in-law FANNY was being implicated in the case of TRIA. Verbally, he said, FANNY had admitted to him that our suspect ROBERTO "OBET" ACLAN was with her at the residence of TRIA at about 7:30 AM on 22 May 1998, but he (Aclan) was not the triggerman. During this meeting, ATTY. FRANK OBIAS was also around. Atty. FANNY OBIAS said she was worried because two (2) men who introduced themselves as NBI Agents visited her mother at Godofredo Reyes, Sr., (GRS) Ragay, Camarines Sur, telling the latter that she, (FANNY) was being tagged as the finger (identifier of the victim to the assailant) in the case of TRIA. This matter causes anxiety to her mother, she said. On said meeting, she admitted OBET ACLAN was with her at the residence of TRIA on or about 7:30 AM on May 22, 1998, and further, that OBET ACLAN was actually at the Pili Airport on that morning but insisted that ROBERTO "OBET" ACLAN was not the triggerman; x x x.[46] (Emphasis supplied.)

In its Comment filed before the CA, the Solicitor General argued that the alleged "interlocking circumstantial evidence" is pure speculation. To render even a preliminary finding of culpability based thereon does not sit well with the cherished "right to be presumed innocent" under Section 14 (2), Article III of the 1987 Constitution. Moreover, the case for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of evidence for the defense.[47]

Petitioners, however, maintain that the records are replete with abundant proof of respondent's complicity in the murder of Engr. Tria. They cite the following circumstances showing the existence of probable cause against the respondent: (1) In a radio interview in Naga City sometime in August 1998, respondent admitted that Aclan is her relative and that she is close to the family of Ona; (2) Respondent was present at the residence of Engr. Tria in the morning of May 22, 1998 between 7:00 to 7:30 a.m. with passengers in her vehicle waiting outside, and when later she was invited by the NBI as possible witness considering that she was the last person seen talking to Engr. Tria before the latter was gunned down at the airport, respondent admitted to SA Eduarte that Aclan was with her that morning at the residence of Engr. Tria; (3) The pre-arranged signal provided by respondent was in the form of a handshake while Ona was at the stairway observing the two, and thereupon Ona waited for the right moment to shoot Engr. Tria from behind; (4) Respondent despite having claimed to be a friend of the Tria family, just left the scene of the crime without asking for help to render assistance to her fallen friend; instead, she just boarded the plane as if no astounding event took place before her very eyes which snuffed the life of her longtime client-friend; and (5) In a conduct unbecoming of Filipinos, respondent never bothered to see the grieving family of Engr. Tria at anytime during the wake, burial or thereafter, and neither did she give them any account of what she saw during the shooting incident, which does not constitute normal behavior.

Probable cause is defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[48] It is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief.[49] A finding of probable cause merely binds over the suspect to stand trial; it is not a pronouncement of guilt.[50]

On the other hand, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[51] Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest.[52]

We reverse the OP's ruling that the totality of evidence failed to establish a prima facie case against the respondent as a conspirator in the killing of Engr. Tria.

To begin with, whether or not respondent actually conspired with Aclan and Ona need not be fully resolved during the preliminary investigation. The absence or presence of conspiracy is factual in nature and involves evidentiary matters. The same is better left ventilated before the trial court during trial, where the parties can adduce evidence to prove or disprove its presence.[53]

Preliminary investigation is executive in character. It does not contemplate a judicial function. It is essentially an inquisitorial proceeding, and often, the only means of ascertaining who may be reasonably charged with a crime.[54] Prosecutors control and direct the prosecution of criminal offenses, including the conduct of preliminary investigation, subject to review by the Secretary of Justice. The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion. Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse. [55]

After a careful evaluation of the entire evidence on record, we find no such grave abuse when the Secretary of Justice found probable cause to charge the respondent with murder in conspiracy with Aclan and Ona. The following facts and circumstances established during preliminary investigation were sufficient basis to incite reasonable belief in respondent's guilt: (a) Motive - respondent had credible reason to have Engr. Tria killed because of the impending criminal prosecution for estafa from her double sale of his lot prior to his death, judging from the strong interest of Engr. Tria's family to run after said property and/or proceeds of the second sale to a third party; (b) Access - respondent was close to Engr. Tria's family and familiar with his work schedule, daily routine and other transactions which could facilitate in the commission of the crime eventually carried out by a hired gunmen, one of whom (Aclan) she and her father categorically admitted being in her company while she visited Engr. Tria hours before the latter was fatally shot at the airport; (c) Suspicious Behavior -- respondent while declaring such close personal relationship with Engr. Tria and even his family, failed to give any satisfactory explanation why she reacted indifferently to the violent killing of her friend while they conversed and shook hands at the airport. Indeed, a relative or a friend would not just stand by and walk away from the place as if nothing happened, as what she did, nor refuse to volunteer information that would help the authorities investigating the crime, considering that she is a vital eyewitness. Not even a call for help to the people to bring her friend quickly to the hospital. She would not even dare go near Engr. Tria's body to check if the latter was still alive.

All the foregoing circumstances, in our mind, and from the point of view of an ordinary person, lead to a reasonable inference of respondent's probable participation in the well-planned assassination of Engr. Tria. We therefore hold that the OP in reversing the DOJ Secretary's ruling, and the CA in affirming the same, both committed grave abuse of discretion. Clearly, the OP and CA arbitrarily disregarded facts on record which established probable cause against the respondent.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision dated August 14, 2006 and Resolution dated December 11, 2006 of the Court of Appeals in CA-G.R. SP No. 86210 are REVERSED and

SET ASIDE. The January 25, 2000 Resolution of then Justice Secretary Serafin Cuevas modifying the July 2, 1999 resolution of the Provincial Prosecutor of Camarines Sur and directing the latter to include respondent in the information for murder filed against Aclan and Ona is hereby REINSTATED and UPHELD.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 57-66. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Eliezer R. De Los Santos and Fernanda Lampas Peralta.

[2] Id. at 84. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta.

[3] CA rollo, pp. 50-56.

[4] Id. at 87-153.

[5] Id. at 84-86.

[6] Id. at 154-155.

[7] Id. at 155-156.

[8] Id. at 176-181.

[9] Id. at 192-213.

[10] Id. at 341-347.

[11] Id. at 344-346.

[12] Id. at 346.

[13] Id. at 252-265.

[14] Id. at 348.

[15] Id. at 274.

[16] See Motion for Reconsideration with Prayer for the Suspension of the Issuance of a Warrant of Arrest, O.P. records, folder 1.

[17] Id.

[18] CA rollo, pp. 276-279.

[19] Id. at 280-281.

[20] Id. at 284-289.

[21] See O.P. records, folder 1.

[22] CA rollo, pp. 300-301.

[23] Id. at 302.

[24] Id. at 293-294.

[25] Id. at 340.

[26] Id. at 354-373.

[27] Id. at 374-378.

[28] Id. at 50-55.

[29] Id. at 57-82.

[30] Id. at 83.

[31] Rollo, pp. 57-65.

[32] Id. at 43-46.

[33] No. L-53373, June 30, 1987, 151 SCRA 462, 471.

[34] "Reiterating And Clarifying The Guidelines Set Forth in Memorandum Circular No. 1266 (4 November 1983) Concerning The Review By The Office Of The President Of Resolutions Issued By The Secretary Of Justice Concerning Preliminary Investigations of Criminal Cases" issued on June 30, 1993. See rollo, pp. 219-220.

[35] G.R. No. 113216, September 5, 1997, 278 SCRA 656.

[36] *Solar Team Entertainment, Inc. v. How*, 393 Phil. 172 (2000).

[37] G.R. No. 127107, October 12, 1998, 297 SCRA 679.

In Dimatulac, petitioners filed a complaint for the murder of SPO3 Virgilio Dimatulac with the judge-designate of the Municipal Circuit Trial Court of Macabebe, Pampanga against Mayor Santiago Yabut, his siblings, and several others, including two John Does. After preliminary investigation, the judge-designate recommended that an Information for murder be filed against the said accused. However, the Assistant Provincial Prosecutor conducted a reinvestigation and issued a Resolution that the accused be charged with homicide only. Petitioners appealed the Assistant Provincial Prosecutor's Resolution with the secretary of justice. Notwithstanding the appeal, an Information for homicide was filed against the accused, and the case was assigned to Judge Reynaldo Roura of Branch 55, RTC Macabebe. Petitioners filed an Urgent Motion to Defer Proceedings pending resolution of their appeal to the Secretary of Justice. Judge Roura denied the motion, holding that there was no indication that the secretary of justice had given due course to the appeal. Petitioners filed 1) a Motion to Inhibit against Judge Roura; and 2) a Petition for Prohibition with the CA to enjoin from proceeding with the arraignment of the accused. Judge Roura voluntarily inhibited himself from the case, which was then transferred to Branch 54 presided by Judge Seginando Villon. The CA issued a Resolution directing respondents to comment and show cause why no Preliminary Injunction should issue. Meanwhile, Judge Villon set the arraignment of the accused who, during arraignment, all pleaded not guilty to the homicide charge. On the other hand, the justice secretary issued an Order that the information be amended from homicide to murder. The accused moved for reconsideration of the said Order, alleging that they would otherwise be placed in double jeopardy; and citing DOJ Order No. 223, Series of 1993, particularly Section 4 thereof, which provides that no appeal to the justice secretary shall be entertained once the accused has already been arraigned. In response to this, the justice secretary issued a Resolution setting aside his Order, reasoning that petitioners' appeal was rendered moot and

academic by the accused's arraignment for homicide. Judge Villon cited this Resolution of the justice secretary, as well as Section 4 of DOJ Order No. 223, Series of 1993 in denying petitioners' Motion to Set Aside Arraignment. On the other hand, the CA dismissed the petition before it for being moot and academic in view of Judge Roura's voluntary inhibition, the accused's arraignment, and the justice secretary's dismissal of petitioners' appeal.

[38] See *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76 & 175013, June 1, 2007, 523 SCRA 318, 341-342.

[39] Sec. 3 (e), Rule 112.

[40] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 40, citing *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[41] *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 252, citing the RULES OF COURT, Rule 112, Section 4, last paragraph.

[42] *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627-628, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[43] *Alawiya v. Datumanong*, *id.*, citing *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 615 (1996), *Brocka v. Enrile*, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188.

[44] CA rollo, pp. 382-383.

[45] *Id.* at 53-54.

[46] *Id.* at 139.

[47] *Id.* at 426-427.

[48] *Tan v. Ballena*, *supra* note 41 at 251, citing *Cruz, Jr. v. People*, G.R. No. 110436, June 27, 1994, 233 SCRA 439; *Ladlad v. Velasco*, *supra* note 38 at 335.

[49] *Id.*, citing *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 360.

[50] *Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City*, G.R. No. 174350, August 13, 2008, 562 SCRA 184, 205.

[51] Article 8, Revised Penal Code.

[52] *People v. Perez*, G.R. No. 179154, July 31, 2009, 594 SCRA 701, 714-715, citing *Mangangey v. Sandiganbayan*, G.R. Nos. 147773-74, February 18, 2008, 546 SCRA 51, 66.

[53] *People v. Dumlao*, G.R. No. 168918, March 2, 2009, 580 SCRA 409, 432.

[54] *Torres, Jr. v. Aguinaldo*, G.R. No. 164268, June 28, 2005, 461 SCRA 599, 610.

[55] *Insular Life Assurance Company Limited v. Serrano*, G.R. No. 163255, June 22, 2007, 525 SCRA 400, 406, citing *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168 (1996) citing *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568 (1996) and *Joaquin, Jr. v. Drilon*, 361 Phil. 900 (1999).

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