

JOSE ANTONIO C. LEVISTE, PETITIONER, VS. HON. ELMO M. ALAMEDA, HON. RAUL M. GONZALEZ, HON. EMMANUEL Y. VELASCO, HEIRS OF THE LATE RAFAEL DE LAS ALAS, RESPONDENTS.

G.R. No. 182677. August 03, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Jose Antonio C. Leviste (petitioner) assails via the present petition for review filed on May 30, 2008 the August 30, 2007 Decision[1] and the April 18, 2008 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 97761 that affirmed the trial court's Orders of January 24, 31, February 7, 8, all in 2007, and denied the motion for reconsideration, respectively.

Petitioner was, by Information[3] of January 16, 2007, charged with homicide for the death of Rafael de las Alas on January 12, 2007 before the Regional Trial Court (RTC) of Makati City. Branch 150 to which the case was raffled, presided by Judge Elmo Alameda, forthwith issued a commitment order[4] against petitioner who was placed under police custody while confined at the Makati Medical Center.[5]

After petitioner posted a P40,000 cash bond which the trial court approved,[6] he was released from detention, and his arraignment was set on January 24, 2007.

The private complainants-heirs of De las Alas filed, with the conformity of the public prosecutor, an Urgent Omnibus Motion[7] praying, inter alia, for the deferment of the proceedings to allow the public prosecutor to re-examine the evidence on record or to conduct a reinvestigation to determine the proper offense.

The RTC thereafter issued the (1) Order of January 24, 2007[8] deferring petitioner's arraignment and allowing the prosecution to conduct a reinvestigation to determine the proper offense and submit a recommendation within 30 days from its inception, inter alia; and (2) Order of January 31, 2007[9] denying reconsideration of the first order. Petitioner assailed these orders via certiorari and prohibition before the Court of Appeals.

Meantime, petitioner filed an Urgent Ex-Parte Manifestation and Motion before the trial court to defer acting on the public prosecutor's recommendation on the proper offense until after the appellate court resolves his application for injunctive reliefs, or alternatively, to grant him time to comment on the prosecutor's recommendation and thereafter set a hearing for the judicial determination of probable cause.[10] Petitioner also separately moved for the inhibition of Judge Alameda with prayer to defer action on the admission of the Amended Information.[11]

The trial court nonetheless issued the other assailed orders, viz: (1) Order of February 7, 2007[12] that admitted the Amended Information[13] for murder and directed the issuance of a warrant of arrest; and (2) Order of February 8, 2007[14] which set the arraignment on February 13, 2007. Petitioner questioned these two orders via supplemental petition before the appellate court.

The appellate court dismissed petitioner's petition, hence, his present petition, arguing that:

PRIVATE RESPONDENT DID NOT HAVE THE RIGHT TO CAUSE THE REINVESTIGATION OF THE CRIMINAL CASE BELOW WHEN THE CRIMINAL INFORMATION HAD ALREADY BEEN FILED WITH THE LOWER COURT. HENCE, THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN FINDING THAT RESPONDENT JUDGE DID NOT ACT WITH GRAVE ABUSE OF DISCRETION IN GRANTING SUCH REINVESTIGATION DESPITE HAVING NO BASIS IN THE RULES OF COURT[;]

RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION IN ADMITTING STATE PROSECUTOR VELASCO'S AMENDED INFORMATION, ISSUING A WARRANT OF ARREST, AND SETTING THE CASE BELOW FOR ARRAIGNMENT, CONSIDERING THAT THE VALIDITY AND LEGALITY OF HIS ORDERS DATED 24 AND 31 JANUARY 2007, WHICH LED TO THE QUESTIONABLE REINVESTIGATION AND ILLEGAL AMENDED INFORMATION[,] ARE YET TO BE RESOLVED BY THIS HONORABLE COURT (sic); [AND]

CONSIDERING THAT PROSECUTOR VELASCO'S FINDINGS IN HIS RESOLUTION DATED 2 FEBRUARY 2007 ARE BLATANTLY BASED ON MERE SPECULATIONS AND CONJECTURES, WITHOUT ANY SUBSTANTIAL OR MATERIAL NEW EVIDENCE BEING ADDUCED DURING THE REINVESTIGATION, RESPONDENT JUDGE SHOULD HAVE AT LEAST ALLOWED PETITIONER'S MOTION FOR A HEARING FOR JUDICIAL DETERMINATION OF PROBABLE CAUSE.[15] (emphasis in the original omitted)

Records show that the arraignment scheduled on March 21, 2007 pushed through during which petitioner refused to plead, drawing the trial court to enter a plea of "not guilty" for him.

Prior thereto or on February 23, 2007, petitioner filed an Urgent Application for Admission to Bail Ex Abundanti Cautela[16] which the trial court, after hearings thereon, granted by Order of May 21, 2007,[17] it finding that the evidence of guilt for the crime of murder is not strong. It accordingly allowed petitioner to post bail in the amount of P300,000 for his provisional liberty.

The trial court, absent any writ of preliminary injunction from the appellate court, went on to try petitioner under the Amended Information. By Decision of January 14, 2009, the trial court found petitioner guilty of homicide, sentencing him to suffer an indeterminate penalty of six years and one day of prision mayor as minimum to 12 years and one day of reclusion temporal as maximum. From the Decision, petitioner filed an appeal to the appellate court, docketed as CA-G.R. CR No. 32159, during the pendency of which he filed an urgent application for admission to bail pending appeal. The appellate court denied petitioner's application which this Court, in G.R. No. 189122, affirmed by Decision of March 17, 2010.

The Office of the Solicitor General (OSG) later argued that the present petition had been rendered moot since the presentation of evidence, wherein petitioner actively participated, had been concluded.[18]

Waiver on the part of the accused must be distinguished from mootness of the petition, for in the present case, petitioner did not, by his active participation in the trial, waive his stated objections.

Section 26, Rule 114 of the Rules of Court provides:

SEC. 26. Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation. - An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

By applying for bail, petitioner did not waive his right to challenge the regularity of the reinvestigation of the

charge against him, the validity of the admission of the Amended Information, and the legality of his arrest under the Amended Information, as he vigorously raised them prior to his arraignment. During the arraignment on March 21, 2007, petitioner refused to enter his plea since the issues he raised were still pending resolution by the appellate court, thus prompting the trial court to enter a plea of "not guilty" for him.

The principle that the accused is precluded after arraignment from questioning the illegal arrest or the lack of or irregular preliminary investigation applies "only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto."^[19] There must be clear and convincing proof that petitioner had an actual intention to relinquish his right to question the existence of probable cause. When the only proof of intention rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible.^[20]

From the given circumstances, the Court cannot reasonably infer a valid waiver on the part of petitioner to preclude him from obtaining a definite resolution of the objections he so timely invoked. Other than its allegation of active participation, the OSG offered no clear and convincing proof that petitioner's participation in the trial was unconditional with the intent to voluntarily and unequivocally abandon his petition. In fact, on January 26, 2010, petitioner still moved for the early resolution of the present petition.^[21]

Whatever delay arising from petitioner's availment of remedies against the trial court's Orders cannot be imputed to petitioner to operate as a valid waiver on his part. Neither can the non-issuance of a writ of preliminary injunction be deemed as a voluntary relinquishment of petitioner's principal prayer. The non-issuance of such injunctive relief only means that the appellate court did not preliminarily find any exception^[22] to the long-standing doctrine that injunction will not lie to enjoin a criminal prosecution.^[23] Consequently, the trial of the case took its course.

The petition is now moot, however, in view of the trial court's rendition of judgment.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.^[24]

The judgment convicting petitioner of homicide under the Amended Information for murder operates as a supervening event that mooted the present petition. Assuming that there is ground^[25] to annul the finding of probable cause for murder, there is no practical use or value in abrogating the concluded proceedings and retrying the case under the original Information for homicide just to arrive, more likely or even definitely, at the same conviction of homicide. Mootness would have also set in had petitioner been convicted of murder, for proof beyond reasonable doubt, which is much higher than probable cause, would have been established in that instance.

Instead, however, of denying the petition outright on the ground of mootness, the Court proceeds to resolve the legal issues in order to formulate controlling principles to guide the bench, bar and public.^[26] In the present case, there is compelling reason to clarify the remedies available before and after the filing of an information in cases subject of inquest.

After going over into the substance of the petition and the assailed issuances, the Court finds no reversible error on the part of the appellate court in finding no grave abuse of discretion in the issuance of the four trial court Orders.

In his first assignment of error, petitioner posits that the prosecution has no right under the Rules to seek from the trial court an investigation or reevaluation of the case except through a petition for review before the Department

of Justice (DOJ). In cases when an accused is arrested without a warrant, petitioner contends that the remedy of preliminary investigation belongs only to the accused.

The contention lacks merit.

Section 6,[27] Rule 112 of the Rules of Court reads:

When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.

After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (underscoring supplied)

A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to fine.[28] As an exception, the rules provide that there is no need for a preliminary investigation in cases of a lawful arrest without a warrant[29] involving such type of offense, so long as an inquest, where available, has been conducted.[30]

Inquest is defined as an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly be charged in court.[31]

It is imperative to first take a closer look at the predicament of both the arrested person and the private complainant during the brief period of inquest, to grasp the respective remedies available to them before and after the filing of a complaint or information in court.

BEFORE THE FILING OF COMPLAINT OR INFORMATION IN COURT, the private complainant may proceed in coordinating with the arresting officer and the inquest officer during the latter's conduct of inquest. Meanwhile, the arrested person has the option to avail of a 15-day preliminary investigation, provided he duly signs a waiver of any objection against delay in his delivery to the proper judicial authorities under Article 125 of the Revised Penal Code. For obvious reasons, this remedy is not available to the private complainant since he cannot waive what he does not have. The benefit of the provisions of Article 125, which requires the filing of a complaint or information with the proper judicial authorities within the applicable period,[32] belongs to the arrested person.

The accelerated process of inquest, owing to its summary nature and the attendant risk of running against Article 125, ends with either the prompt filing of an information in court or the immediate release of the arrested person.[33] Notably, the rules on inquest do not provide for a motion for reconsideration.[34]

Contrary to petitioner's position that private complainant should have appealed to the DOJ Secretary, such remedy is not immediately available in cases subject of inquest.

Noteworthy is the proviso that the appeal to the DOJ Secretary is by "petition by a proper party under such rules as the Department of Justice may prescribe." [35] The rule referred to is the 2000 National Prosecution Service Rule on Appeal, [36] Section 1 of which provides that the Rule shall "apply to appeals from resolutions x x x in cases subject of preliminary investigation/ reinvestigation." In cases subject of inquest, therefore, the private party should first avail of a preliminary investigation or reinvestigation, if any, before elevating the matter to the DOJ Secretary.

In case the inquest proceedings yield no probable cause, the private complainant may pursue the case through the regular course of a preliminary investigation.

ONCE A COMPLAINT OR INFORMATION IS FILED IN COURT, the rules yet provide the accused with another opportunity to ask for a preliminary investigation within five days from the time he learns of its filing. The Rules of Court and the New Rules on Inquest are silent, however, on whether the private complainant could invoke, as respondent heirs of the victim did in the present case, a similar right to ask for a reinvestigation.

The Court holds that the private complainant can move for reinvestigation, subject to and in light of the ensuing disquisition.

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the public prosecutor. [37] The private complainant in a criminal case is merely a witness and not a party to the case and cannot, by himself, ask for the reinvestigation of the case after the information had been filed in court, the proper party for that being the public prosecutor who has the control of the prosecution of the case. [38] Thus, in cases where the private complainant is allowed to intervene by counsel in the criminal action, [39] and is granted the authority to prosecute, [40] the private complainant, by counsel and with the conformity of the public prosecutor, can file a motion for reinvestigation.

In fact, the DOJ instructs that before the arraignment of the accused, trial prosecutors must "examine the Information vis-à-vis the resolution of the investigating prosecutor in order to make the necessary corrections or revisions and to ensure that the information is sufficient in form and substance." [41]

x x x Since no evidence has been presented at that stage, the error would appear or be discoverable from a review of the records of the preliminary investigation. Of course, that fact may be perceived by the trial judge himself but, again, realistically it will be the prosecutor who can initially determine the same. That is why such error need not be manifest or evident, nor is it required that such nuances as offenses includible in the offense charged be taken into account. It necessarily follows, therefore, that the prosecutor can and should institute remedial measures. [42] (emphasis and underscoring supplied)

The prosecution of crimes appertains to the executive department of the government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion - the discretion of what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors. [43]

The prosecution's discretion is not boundless or infinite, however. [44] The standing principle is that once an information is filed in court, any remedial measure such as a reinvestigation must be addressed to the sound discretion of the court. Interestingly, petitioner supports this view. [45] Indeed, the Court ruled in one case that:

The rule is now well settled that once a complaint or information is filed in court, any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court. Although the prosecutor retains the direction and control of the prosecution of criminal cases even when the case is already in court, he cannot impose his opinion upon the tribunal. For while it is true that the

prosecutor has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court, once the case had already been brought therein any disposition the prosecutor may deem proper thereafter should be addressed to the court for its consideration and approval. The only qualification is that the action of the court must not impair the substantial rights of the accused or the right of the People to due process of law.

x x x x

In such an instance, before a re-investigation of the case may be conducted by the public prosecutor, the permission or consent of the court must be secured. If after such re-investigation the prosecution finds a cogent basis to withdraw the information or otherwise cause the dismissal of the case, such proposed course of action may be taken but shall likewise be addressed to the sound discretion of the court.[46] (underscoring supplied)

While *Abugotal v. Judge Tiro*[47] held that to ferret out the truth, a trial is to be preferred to a reinvestigation, the Court therein recognized that a trial court may, where the interest of justice so requires, grant a motion for reinvestigation of a criminal case pending before it.

Once the trial court grants the prosecution's motion for reinvestigation, the former is deemed to have deferred to the authority of the prosecutorial arm of the Government. Having brought the case back to the drawing board, the prosecution is thus equipped with discretion - wide and far reaching - regarding the disposition thereof,[48] subject to the trial court's approval of the resulting proposed course of action.

Since a reinvestigation may entail a modification of the criminal information as what happened in the present case, the Court's holding is bolstered by the rule on amendment of an information under Section 14, Rule 110 of the Rules of Court:

A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 11, Rule 119, provided the accused would not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (emphasis supplied)

In fine, before the accused enters a plea, a formal or substantial amendment of the complaint or information may be made without leave of court.[49] After the entry of a plea, only a formal amendment may be made but with leave of court and only if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused.[50]

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void ab initio cannot be amended to obviate a ground for quashal.[51] An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[52]

Considering the general rule that an information may be amended even in substance and even without leave of court at any time before entry of plea, does it mean that the conduct of a reinvestigation at that stage is a mere superfluity?

It is not.

Any remedial measure springing from the reinvestigation - be it a complete disposition or an intermediate modification[53] of the charge - is eventually addressed to the sound discretion of the trial court, which must make an independent evaluation or assessment of the merits of the case. Since the trial court would ultimately make the determination on the proposed course of action, it is for the prosecution to consider whether a reinvestigation is necessary to adduce and review the evidence for purposes of buttressing the appropriate motion to be filed in court.

More importantly, reinvestigation is required in cases involving a substantial amendment of the information. Due process of law demands that no substantial amendment of an information may be admitted without conducting another or a new preliminary investigation. In *Matalam v. The 2nd Division of the Sandiganbayan*,[54] the Court ruled that a substantial amendment in an information entitles an accused to another preliminary investigation, unless the amended information contains a charge related to or is included in the original information.

The question to be resolved is whether the amendment of the information from homicide to murder is considered a substantial amendment, which would make it not just a right but a duty of the prosecution to ask for a preliminary investigation.

The Court answers in the affirmative.

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following have been held to be mere formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.[55] (emphasis and underscoring supplied)

Matalam adds that the mere fact that the two charges are related does not necessarily or automatically deprive the accused of his right to another preliminary investigation. Not at all dignum is the fact that both the original information and the amended information in *Matalam* were similarly charging the accused with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

In one case,[56] it was squarely held that the amendment of the information from homicide to murder is "one of substance with very serious consequences." [57] The amendment involved in the present case consists of additional averments of the circumstances of treachery, evident premeditation, and cruelty, which qualify the offense charged from homicide to murder. It being a new and material element of the offense, petitioner should be given the chance to adduce evidence on the matter. Not being merely clarificatory, the amendment essentially varies the prosecution's original theory of the case and certainly affects not just the form but the weight of defense to be mustered by petitioner.

The Court distinguishes the factual milieu in *Buhat v. CA* [58] and *Pacoy v. Cajigal*, [59] wherein the amendment

of the caption of the Information from homicide to murder was not considered substantial because there was no real change in the recital of facts constituting the offense charged as alleged in the body of the Information, as the allegations of qualifying circumstances were already clearly embedded in the original Information. Buhat pointed out that the original Information for homicide already alleged the use of superior strength, while Pacoy states that the averments in the amended Information for murder are exactly the same as those already alleged in the original Information for homicide. None of these peculiar circumstances obtains in the present case.

Considering that another or a new preliminary investigation is required, the fact that what was conducted in the present case was a reinvestigation does not invalidate the substantial amendment of the Information. There is no substantial distinction between a preliminary investigation and a reinvestigation since both are conducted in the same manner and for the same objective of determining whether there exists sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial.[60] What is essential is that petitioner was placed on guard to defend himself from the charge of murder[61] after the claimed circumstances were made known to him as early as the first motion.

Petitioner did not, however, make much of the opportunity to present countervailing evidence on the proposed amended charge. Despite notice of hearing, petitioner opted to merely observe the proceedings and declined to actively participate, even with extreme caution, in the reinvestigation. *Mercado v. Court of Appeals* states that the rules do not even require, as a condition sine qua non to the validity of a preliminary investigation, the presence of the respondent as long as efforts to reach him were made and an opportunity to controvert the complainant's evidence was accorded him.[62]

In his second assignment of error, petitioner basically assails the hurried issuance of the last two assailed RTC Orders despite the pendency before the appellate court of the petition for certiorari challenging the first two trial court Orders allowing a reinvestigation.

The Rules categorically state that the petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued.[63] The appellate court, by Resolution

of February 15, 2007,[64] denied petitioner's application for a temporary restraining order and writ of preliminary injunction. Supplementary efforts to seek injunctive reliefs proved futile.[65] The appellate court thus did not err in finding no grave abuse of discretion on the part of the trial court when it proceeded with the case and eventually arraigned the accused on March 21, 2007, there being no injunction order from the appellate court. Moreover, petitioner opted to forego appealing to the DOJ Secretary, a post-inquest remedy that was available after the reinvestigation and which could have suspended the arraignment.[66]

Regarding petitioner's protestations of haste, suffice to state that the pace in resolving incidents of the case is not per se an indication of bias. In *Santos-Concio v. Department of Justice*,[67] the Court held:

Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot per se be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case.

The presumption of regularity includes the public officer's official actuations in all phases of work. Consistent with such presumption, it was incumbent upon petitioners to present contradictory evidence other than a mere tallying of days or numerical calculation. This, petitioners failed to discharge. The swift completion of the Investigating Panel's initial task cannot be relegated as shoddy or shady without discounting the presumably regular performance of not just one but five state prosecutors.[68]

There is no ground for petitioner's protestations against the DOJ Secretary's sudden designation of Senior State Prosecutor Emmanuel Velasco as Acting City Prosecutor of Makati City for the present case[69] and the latter's conformity to the motion for reinvestigation.

In granting the reinvestigation, Judge Alameda cannot choose the public prosecutor who will conduct the reinvestigation or preliminary investigation.[70] There is a hierarchy of officials in the prosecutory arm of the executive branch headed by the Secretary of Justice[71] who is vested with the prerogative to appoint a special prosecutor or designate an acting prosecutor to handle a particular case, which broad power of control has been recognized by jurisprudence.[72]

As for the trial court's ignoring the DOJ Secretary's uncontested statements to the media which aired his opinion that if the assailant merely intended to maim and not to kill the victim, one bullet would have sufficed -- the DOJ Secretary reportedly uttered that "the filing of the case of homicide against ano against Leviste linte k naman eh I told you to watch over that case... there should be a report about the ballistics, about the paraffin, etc., then that's not a complete investigation, that's why you should use that as a ground" -- no abuse of discretion, much less a grave one, can be imputed to it.

The statements of the DOJ Secretary do not evince a "determination to file the Information even in the absence of probable cause." [73] On the contrary, the remarks merely underscored the importance of securing basic investigative reports to support a finding of probable cause. The original Resolution even recognized that probable cause for the crime of murder cannot be determined based on the evidence obtained "[u]nless and until a more thorough investigation is conducted and eyewitness/es [is/]are presented in evidence[.]" [74]

The trial court concluded that "the wound sustained by the victim at the back of his head, the absence of paraffin test and ballistic examination, and the handling of physical evidence," [75] as rationalized by the prosecution in its motion, are sufficient circumstances that require further inquiry.

That the evidence of guilt was not strong as subsequently assessed in the bail hearings does not affect the prior determination of probable cause because, as the appellate court correctly stated, the standard of strong evidence of guilt which is sufficient to deny bail to an accused is markedly higher than the standard of judicial probable cause which is sufficient to initiate a criminal case.[76]

In his third assignment of error, petitioner faults the trial court for not conducting, at the very least, a hearing for judicial determination of probable cause, considering the lack of substantial or material new evidence adduced during the reinvestigation.

Petitioner's argument is specious.

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether that function has been correctly discharged by the public prosecutor, i.e., whether he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.[77]

The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no

probable cause, the judge cannot be forced to issue the arrest warrant.[78] Paragraph (a), Section 5,[79] Rule 112 of the Rules of Court outlines the procedure to be followed by the RTC.

To move the court to conduct a judicial determination of probable cause is a mere superfluity, for with or without such motion, the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.[80]

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. But the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause, and on the basis thereof, he may already make a personal determination of the existence of probable cause; and (2) if he is not satisfied that probable cause exists, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[81] (emphasis and underscoring supplied)

The rules do not require cases to be set for hearing to determine probable cause for the issuance of a warrant of arrest of the accused before any warrant may be issued.[82] Petitioner thus cannot, as a matter of right, insist on a hearing for judicial determination of probable cause. Certainly, petitioner "cannot determine beforehand how cursory or exhaustive the [judge's] examination of the records should be [since t]he extent of the judge's examination depends on the exercise of his sound discretion as the circumstances of the case require." [83] In one case, the Court emphatically stated:

The periods provided in the Revised Rules of Criminal Procedure are mandatory, and as such, the judge must determine the presence or absence of probable cause within such periods. The Sandiganbayan's determination of probable cause is made ex parte and is summary in nature, not adversarial. The Judge should not be stymied and distracted from his determination of probable cause by needless motions for determination of probable cause filed by the accused.[84] (emphasis and underscoring supplied)

Petitioner proceeds to discuss at length evidentiary matters, arguing that no circumstances exist that would qualify the crime from homicide to murder.

The allegation of lack of substantial or material new evidence deserves no credence, because new pieces of evidence are not prerequisites for a valid conduct of reinvestigation. It is not material that no new matter or evidence was presented during the reinvestigation of the case. It should

be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. New matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor to review and re-evaluate its findings and the evidence already submitted.[85]

Moreover, under Rule 45 of the Rules of Court, only questions of law may be raised in, and be subject of, a petition for review on certiorari since this Court is not a trier of facts. The Court cannot thus review the evidence adduced by the parties on the issue of the absence or presence of probable cause, as there exists no exceptional circumstances to warrant a factual review.[86]

In a petition for certiorari, like that filed by petitioner before the appellate court, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment.[87] The court's duty in the pertinent case is confined to determining whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in

the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of certiorari, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.[88]

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97761 are AFFIRMED.

SO ORDERED.

Nachura,[*] Bersamin, Abad,**] and Villarama, Jr., JJ., concur.

[*] Additional Member per Raffle dated July 1, 2010 in lieu of Associate Justice Arturo D. Brion who inhibited.

**] Designated as Additional Member, per Special Order No. 843 (May 17, 2010), in view of the vacancy occasioned by the retirement of Chief Justice Reynato S. Puno.

[1] Rollo, pp. 56-82, penned by Justice Hakim S. Abdulwahid, with Justices Rodrigo V. Cosico and Arturo G. Tayag concurring.

[2] Id.at 84-87, penned by Justice Hakim S. Abdulwahid, with Justices Rodrigo V. Cosico and Arturo G. Tayag concurring.

[3] Id.at 90, signed by 2nd Assistant City Prosecutor Henry M. Salazar. The concomitant Resolution was approved by Prosecutor IV Romulo Nanola for Senior State Prosecutor Leo Dacera III, Officer-in-Charge.

[4] Id.at 97.

[5] Id.at 88.

[6] CA rollo, p. 58.

[7] Rollo, pp. 101-107.

[8] Id.at 109-111.

[9] Id.at 122-129.

[10] Id.at 145-147.

[11] Id.at 162-168.

[12] Id.at 171-177.

[13] Id.at 134-135, signed by Senior State Prosecutor Emmanuel Y. Velasco in his capacity as the designated Acting City Prosecutor of Makati City pro hac vice per Department Order No. 57 of January 22, 2007 (vide rollo, p. 100).

[14] Id.at 180.

[15] Id.at 20-21.

[16] Id.at 255-260.

[17] Id.at 317-350.

[18] Id.at 391-392.

[19] Borlongan, Jr. v. Peña, G.R. No. 143591, November 23, 2007, 538 SCRA 221, 229.

[20] Okabe v. Hon. Gutierrez, 473 Phil. 758, 777 (2004).

[21] Rollo, pp. 424-427.

[22] In extreme cases, the following exceptions to the rule have been recognized: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is sub judice; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied. [Andres v. Justice Secretary Cuevas, 499 Phil. 36, 48-49 (2005)].

[23] Asutilla v. PNB, 225 Phil. 40, 43 (1986), which explains that public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society.

[24] Integrated Bar of the Philippines v. Atienza, G.R. No. 175241, February 24, 2010.

[25] In exceptional cases, the Court took the extraordinary step of annulling findings of probable cause (vide Brocka v. Enrile, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189).

[26] Atienza v. Villarosa, 497 Phil. 689, 699 (2005).

[27] Formerly Sec. 7, as amended by A.M. No. 05-8-26-SC (August 30, 2005) effective October 3, 2005.

[28] Rules of Court, Rule 112, Sec. 1.

[29] Id., Rule 113, Sec. 5, pars. (a) & (b).

[30] Id., Rule 112, Secs. 1 & 6, which also provides that in the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

[31] New Rules on Inquest, DOJ Department Circular No. 61 (September 21, 1993), Sec. 1.

[32] Vide Soria v. Hon. Desierto, 490 Phil. 749 (2005).

[33] New Rules on Inquest, DOJ Department Circular No. 61 (September 21, 1993), Secs. 13 & 15.

[34] Unlike in a preliminary investigation, vide 2000 NPS Rule on Appeal, DOJ Department Circular No. 70 (July 3, 2000), Sec. 3.

If upon petition by a proper party under such Rules as the Department of Justice may prescribe x x x. (Rules of Court, Rule 112, sec. 4, last par.).

[36] 2000 NPS Rule on Appeal, DOJ Department Circular No. 70 (July 3, 2000).

[37] Rules of Court, Rule 110, Sec. 5.

[38] Vide People v. Marcelo, G.R. No. 105005, June 2, 1993, 223 SCRA 24, 39-40.

[39] Rules of Court, Rule 110, Sec. 16.

[40] Id. at Sec. 5, as amended by A.M. No. 02-2-07-SC (April 10, 2002).

[41] Revised Manual for Prosecutors (2008), Part V, II(A)(1).

[42] Galvez v. Court of Appeals, G.R. No. 114046, October 24, 1994, 237 SCRA 685, 701-702, et seq.

[43] Soberano v. People, G.R. No. 154629, October 5, 2005, 472 SCRA 125, 139-140.

[44] Id. at 140.

[45] Vide rollo, p. 164.

[46] Galvez v. Court of Appeals, supra at 698-699.

[47] 160 Phil. 884, 890 (1975).

[48] Soberano v. People, supra at 140.

[49] Except those amendments that downgrade the nature of the offense or exclude an accused from the charge as provided by second paragraph of Section 14 of Rule 110, vide Soberano v. People, supra.

[50] Fronda-Baggao v. People, G.R. No. 151785, December 10, 2007, 539 SCRA 531, 535.

[51] People v. Romualdez, G.R. No. 166510, April 29, 2009, 587 SCRA 123, 134, stated in response to the argument that the amendment of an Information filed under an invalid or unauthorized preliminary investigation could retroact to the time of its filing to thus defeat the claim of prescription.

[52] Agustin v. Pamintuan, G.R. No. 164938, August 2, 2005, 467 SCRA 601, 612, involving the substantial defect of failure to allege in the Information for Libel the place either where the offended party actual resided at the time the offense was committed or where the libelous article was printed or first published.

[53] Baltazar v. Chua, G.R. No. 177583, February 27, 2009, 580 SCRA 369, 377, where the Court stated:

Considering that the trial court has the power and duty to look into the propriety of the prosecution's motion to dismiss, with much more reason is it for the trial court to evaluate and to make its own appreciation and conclusion, whether the modification of the charges and the dropping of one of the accused in the information, as recommended by the Justice Secretary, is substantiated by evidence. This should be the state of affairs, since the disposition of the case - such as its continuation or dismissal or exclusion of an accused - is reposed in the sound discretion of the trial court. (underscoring supplied).

[54] 495 Phil. 664, 675-676 (2005).

[55] Ricarze v. Court of Appeals, G.R. No. 160451, February 9, 2007, 515 SCRA 302, 315-316, citing Matalam v. The 2nd Division of the Sandiganbayan, supra at 674-675.

[56] Dionaldo v. Hon. Dacuycuy, etc., 195 Phil. 544 (1981).

[57] Id. at 545.

[58] 333 Phil. 562 (1996).

[59] G.R. No. 157472, September 28, 2007, 534 SCRA 338.

[60] People v. Hon. Navarro, 337 Phil. 122, 133 (1997).

[61] Matalam v. The 2nd Division of the Sandiganbayan, supra at 678, citing People v. Magpale, 70 Phil. 176, 180 (1940).

[62] Mercado v. CA, 315 Phil. 657, 662 (1995), which aims to forestall attempts at thwarting criminal investigations by failing to appear or employing dilatory tactics.

[63] Rules of Court, Rule 65, Sec. 7. The present provision, as amended by A.M. No. 07-7-12-SC (December 4, 2007), even adds that "[t]he public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration[, and that f]ailure of the public respondent to proceed with the principal case may be a ground for an administrative charge."

[64] CA rollo, pp. 126-127.

[65] The appellate court deferred the resolution of the prayer for injunctive reliefs contained in his Supplemental Petition until the responsive pleadings had been filed (vide Resolution of February 27, 2007, id.at 216-217) and found that the resolution of such prayer was closely related to and inextricably interwoven with the resolution of the main case (vide Resolution of April 12, 2007, CA rollo, pp. 307-308).

[66] Rules of Court, Rule 116, Sec. 11.

[67] G.R. No. 175057, January 29, 2008, 543 SCRA 70.

[68] Id. at 89.

[69] Rollo, p. 100.

[70] Vide People v. Hon. Navarro, supra at 133, citing Abugotal v. Judge Tiro, supra

[71] Id. at 131.

[72] Galvez v. Court of Appeals, supra at 710-711; Jalandoni v. Secretary Drilon, 383 Phil. 855, 866-868 (2000).

[73] Cf. Ladlad v. Velasco, G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318, 345.

[74] Rollo, p. 95.

[75] Id.at 126.

[76] Id.at 87.

[77] People v. Castillo, G.R. No. 171188, June 19, 2009, 590 SCRA 95, 105-106.

[78] Id. at 106.

[79] Formerly Sec. 6, as amended by A.M. No. 05-8-26-SC (August 30, 2005) effective October 3, 2005, which reads:

(a) By the Regional Trial Court. - Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

[80] Baltazar v. People, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293.

[81] Borlongan Jr. v. Peña, supra at 235.

[82] *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 398.

[83] *Vide Mayor Abdula v. Hon. Guiani*, 382 Phil. 757, 776 (2000).

[84] *Id.* at 399.

[85] *Roxas v. Hon. Vasquez*, 411 Phil. 276, 286-287 (2001); unless otherwise required by law, *vide Mayor Balindong v. Court of Appeals*, 488 Phil. 203, 212-213 (2004), citing Memorandum Circular No. 1266, in relation to Memorandum Circular No. 1294 of November 4, 1993.

[86] *Chan v. Court of Appeals*, 497 Phil. 41, 50 (2005).

[87] *Id.* at 53.

[88] *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1185 (1996).

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