

**HEIRS OF FEDERICO C. DELGADO AND ANNALISA PESICO,
PETITIONERS, VS. LUISITO Q. GONZALEZ AND ANTONIO T.
BUENAFLOR, RESPONDENTS.**

G.R. No. 184337. August 07, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review on certiorari[1] assailing the Amended Decision[2] dated 29 August 2008 of the Court of Appeals' Former Special Seventh Division, which reversed the Original Decision[3] dated 18 March 2008 of the Court of Appeals' Seventh Division, in CA-G.R. SP No. 101196.

The Antecedent Facts

O11 March 2007, the police found the dead body of Federico C. Delgado (Delgado) at his residence in Mayflower Building, 2515 Leon Guinto corner Estrada Streets, Malate, Manila. The police was alerted by Annalisa D. Pesico (Pesico), who allegedly was present at the time of the commission of the crime and was likewise injured in the incident.[4]

On 1 June 2007, on behalf of Pesico and the heirs of Delgado (petitioners),[5] the Manila Police District (MPD), represented by Alejandro B. Yanquiling Jr., Chief of the Homicide Section, filed a complaint-affidavit[6] with the Office of the City Prosecutor of Manila. The MPD charged respondents Luisito Q. Gonzalez (Gonzalez) and Antonio T. Buenaflor (Buenaflor) with the murder of Delgado and frustrated murder of Pesico. Gonzalez is the stepbrother of the deceased and Buenaflor was a former driver for 15 years of Citadel Corporation, owned by the Delgado family.

Together with the complaint-affidavit, the police presented the following documents:

- Sworn Statement ("Sinumpaang Salaysay") of Pesico dated 11 March 2007;[7]
- Supplemental Sworn Statement ("Karagdagang Sinumpaang Salaysay") of Pesico dated 15 March 2007;[8] and
- Crime and Progress Reports of Senior Police Officer 2 (SPO2) Virgo Ban Villareal dated 23 March 2007.[9]

At petitioners' request, the case was transferred to the Department of Justice (DOJ) for preliminary investigation.[10] On 20 June 2007, the MPD filed a Supplemental Complaint-Affidavit[11] and attached the following additional documents:

- Scene of the Crime Operation (SOCO) Report dated 11 March 2007;[12]
- Medical Certificate of Pesico from the Ospital ng Maynila dated 7 June 2007;[13]
- Cartographic Sketch of one of the suspects dated 13 March 2007, drawn by an artist sketcher of the MPD, as

described by Pesico;[14]

- Photographs of criminals and Delgado's family members, relatives, friends and employees, shown to Pesico, where she recognized Gonzalez and Buenaflor as the ones who mauled her and murdered Delgado;[15]

- Affidavit of SPO2 Virgo Ban Villareal dated 15 June 2007 attesting to the identification made by Pesico after viewing said photographs;[16]

- Affidavit of Retired Police Superintendent Leonito Manipol Cantollas, the forensic document examiner who analyzed the questioned handwritten word "FRANCO," the inscription on a wall found at the crime scene;[17]

- Questioned Document Examination Report No. 004-07 of Leonito Manipol Cantollas;[18]

- Curriculum Vitae of Leonito Manipol Cantollas;[19]

- Complaint-Affidavit for Robbery filed by Jose Mari C. Delgado, stepbrother of Gonzalez, against Ruby Q. Gonzalez-Meyer, sister of Gonzalez;[20]

- Letter via electronic mail dated 4 July 2003 written by Ruby Q. Gonzalez-Meyer to her and Gonzalez's mother, Vicky Quirino Gonzalez-Delgado;[21]

- Newspaper clipping taken from the Philippine Daily Inquirer dated 26 March 2007, where Gonzalez's wife, Kuh Ledesma, talked about him, their relationship and the accusations that her husband was facing;[22]

- Newspaper clipping taken from the Philippine Daily Inquirer dated 22 March 2007, referring to the family feud between the Delgado and Gonzalez siblings;[23] and

- Police Blotter dated 16 March 2007 reported by Atty. Augusto M. Perez, Jr., lawyer of Francisco "Franco" Delgado III, regarding a threatening phone call by an unknown caller made on 15 March 2007 at the latter's residence.[24]

Gonzalez and Buenaflor filed their Counter-Affidavits, respectively.[25] Together with his counter-affidavit, Gonzalez attached relevant documents[26] establishing his confinement at the Neuro-Psychiatric Unit of the Makati Medical Center from 7 March 2007 until 18 March 2007 and the corroborative affidavits of 29 impartial and independent witnesses composed of physicians, nurses and personnel of said hospital.[27] On the other hand, Buenaflor presented the affidavit of his employer, who attested that Buenaflor was on duty and driving for him at the time of Delgado's death.[28]

Acting City Prosecutor of Manila Cielitolindo A. Luyun (Investigating Prosecutor) conducted the preliminary investigation and evaluated the evidence submitted by the MPD, as well as respondents' Counter-Affidavits, corroborating affidavits of 29 witnesses, and supporting documentary evidence. In a Resolution dated 10 September 2007, the Investigating Prosecutor dismissed the complaint for lack of probable cause that respondents committed the crimes of murder and frustrated murder.[29]

On 18 September 2007, petitioners filed a Petition for Review with the Secretary of Justice. On 15 October 2007, then Acting Secretary of Justice Agnes VST Devanadera (Acting Secretary Devanadera) reversed the finding of the Investigating Prosecutor and directed the filing of separate informations for murder and less serious physical injuries against respondents.[30]

On 18 October 2007, respondents filed a Motion for Reconsideration which was denied by Acting Secretary Devanadera in a Resolution dated 26 October 2007.[31]

On 30 October 2007, the corresponding Informations were filed. The charge for the crime of murder was filed

before the Regional Trial Court (RTC) of Manila, Branch 32, docketed as Criminal Case No. 07-257487. The charge of less serious physical injuries was filed before the Metropolitan Trial Court of Manila, Branch 9, docketed as Criminal Case No. 441878.[32]

Thereafter, respondents filed with the Court of Appeals a petition for certiorari and prohibition under Rule 65, docketed as CA-G.R. SP No. 101196, assailing the Resolutions of Acting Secretary Devanadera dated 15 October 2007 and 26 October 2007.[33]

The Ruling of the Court of Appeals

On 18 March 2008, the Court of Appeals, in its Original Decision, dismissed the petition and denied respondents' application for preliminary and/or permanent injunctive writ. The appellate court found no grave abuse of discretion on the part of Acting Secretary Devanadera in issuing the Resolutions dated 15 October 2007 and 26 October 2007. It affirmed the existence of probable cause when Pesico, the lone eyewitness of the commission of the crime, positively identified respondents as the perpetrators. The relevant portion of the Original Decision states:

As held by public respondent, probable cause was met, and rightly so, when Pesico, the lone eyewitness of the commission of the crime positively identified petitioners as the authors of the bestial act. To cast doubt on Pesico's positive identification of petitioners, the latter pointed to the alleged inconsistencies in the two affidavits that the former has executed and such other circumstances surrounding the commission of the crime showing the improbability of identification. But as correctly ruled by public respondent, these are minor inconsistencies and matters which are not enough, at that stage in time, to overthrow the possibility and credibility of identification.

On the one hand are the following facts, established by the complaints: (1) That Pesico, who was likewise injured, witnessed the commission of the crime; (2) Her condition, despite the injury caused by the blunt object that was used to maul her, with swollen eyes, tied in the arms and legs, does not totally forestall the possibility that she could have seen and identified the assailants; (3) Pesico identified petitioners as the authors of the complained acts; and (4) No evidence to show that Pesico and petitioners know each other as to entertain any possibility that her identification may have been prompted by ill-motive. On the other, are petitioners' defense of alibi and denial which they assert were not considered by public respondent.

In order to overthrow the jurisprudential injunction of giving superior regard to positive identification over the defenses of alibi and denial, these defenses should be clearly established and must not leave any room for doubt as to its plausibility and verity. It (alibi) cannot prevail over the positive testimonies of the prosecution witnesses who have no motive to testify falsely against the accused.

The burden of evidence, thus, shifts on the respondents to show that their defenses of alibi and denial are strong enough to defeat probable cause, which was engendered by the prosecution's alleged eyewitness' positive identification of them as the assailants to the crime under investigation. Moreover, for alibi to prosper, there must be proof that it was physically impossible for the accused to be at the scene of the crime at the time it was committed. At this juncture, We note the undisputed fact, concerning the accessibility of the distance between the crime scene and the hospital where petitioner Gonzale[z] alleged to have been detailed/admitted. The same is true with petitioner Buenaflor who was only in the vicinity of Roxas Boulevard. Considering the distance of the locus criminis and the places petitioners alleged they were at the time of the commission of the crime, neither their arguments nor the affidavits of their witnesses draw out the possibility, nay create physical impossibility, that they may have been at the scene of the crime when it was committed.

x x x

IN VIEW OF THE FOREGOING, We find no grave abuse of discretion on the part of the Acting Secretary of Justice in issuing the Resolutions dated 15 October 2007 and 26 October 2007.

ACCORDINGLY, the present Petition is hereby DISMISSED and petitioners' application for preliminary (and/or permanent) injunctive writ is necessarily denied.

SO ORDERED.[34]

Respondents then filed a Motion for Reconsideration with the Court of Appeals on 27 March 2008.[35]

Meanwhile, on 3 July 2008, the RTC ordered that warrants of arrest be issued against respondents.[36] On 16 and 21 July 2008, Gonzalez and Buenaflor, respectively, surrendered voluntarily to the police.[37] On 28 July 2008, respondents filed with the RTC a Motion for Reconsideration (of the Order dated 3 July 2008).

To address the motion for reconsideration filed by respondents, the Court of Appeals held oral arguments on 17 July 2008. After said hearing, the appellate court issued an Amended Decision dated 29 August 2008. In the Amended Decision, the Court of Appeals granted the motion for reconsideration and ordered that the Informations charging petitioners with murder and less serious physical injuries be quashed and dismissed. The relevant portion of the Amended Decision states:

This Court has carefully evaluated the evidence of the parties once more, and its reassessment of the evidence compels it to reconsider its previous affirmation of public respondent Acting Secretary of Justice's finding of probable cause. The Court's incisive scrutiny of the evidence led it to the conclusion that there was really insufficient evidence to support public respondent Acting Secretary of Justice's finding of probable cause. It is significant to stress at this point that while "probable guilt" and "evidence less than sufficient for conviction" is the threshold in probable cause determinations, it is also important nay indispensable that there be sufficient and credible evidence to demonstrate the existence of probable cause.

x x x

Public respondent Acting Secretary of Justice's finding of probable cause against the petitioners is based solely on the account of the prosecution's lone eyewitness, private respondent Annalisa Pesico. x x x

It is once apparent that public respondent Acting Secretary of Justice did not really dwell on the essential facts of the case, much less dig through the crucial details of private respondent Pesico's account. Curiously, a close reading of public respondent Acting Secretary of Justice's assailed resolution reveals that except for the rather sweeping finding that private respondent Pesico "positively identified" the petitioners, most of it were re-statements, without more, of broad principles and presumptions in criminal law, such as the doctrines on alibi, denial, and positive identification. Such disposition utterly falls short of the admonitions enunciated in Salonga and reiterated in Allado. Indeed, while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. x x x

The pivotal question then is, was there really positive identification of the petitioners?

In *People vs. Teehankee, Jr.*, the Supreme Court explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, thus:

"x x x Out-of-court identification is conducted by the police in various ways. It is done thru show-ups where the suspect alone is brought face to face with the witness for identification. It is done thru mug shots where photographs are shown to the witness to identify the suspect. It is also done thru line-ups where a witness

identifies the suspect from a group of persons lined up for the purpose. Since corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the totality of circumstances test where they consider the following factors, viz: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure."

Taking into consideration the foregoing test, this Court finds sufficient reasons to seriously doubt the identification made by private respondent Pesico pointing to the petitioners as the culprits.

First, a careful analysis of private respondent Pesico's account would reveal that she did not really have sufficient opportunity to view the assailants at the time of the commission of the crime. By her own account, private respondent Pesico narrated that as they were about to enter Federico's room, two (2) men suddenly came out from the room and immediately stabbed Federico, while she was also hit with a hard object on her head and body. Considering the suddenness of the attack plus the fact that the assailants had "covers" or masks on their faces, it was certainly not possible, at that instance, that she could have seen their faces. In a later statement which she executed four (4) days after, she nonetheless repaired her account by explaining that while petitioners had "covers" on their faces and while her own face was covered with towel and some pieces of clothing, she nevertheless, can still see through them, as in fact, she saw the face of petitioner Luisito Gonzale[z] when the latter allegedly removed the cover in his face because of the humidity inside the room. At this point, private respondent Pesico was obviously referring at that particular instance when she was lying down on the floor inside the dressing room. This Court entertains nagging doubts in this respect. x x x

Second, private respondent Pesico utterly missed out important details in her first narration of the events that transpired during the commission of the crime. Significant details such as the "covers" or masks on the faces of the assailants, the strong Visayan accent of one of the assailant, that the television was turned "on", that the assailants removed their masks because of the heat in the room, that her face was covered with towel and some pieces of clothing, etc., were entirely lacking in her first sworn statement, and were only supplied later in her second sworn statement. While her first sworn statement undoubtedly counts as a "fresh account" of the incident, there are valid reasons to suspect that the second sworn statement could have been tainted, if not supplied or suggested, considering the intervening time between the execution of the first and second statements.

Third, there was little certainty in private respondent Pesico's identification. There was no mention at all of any distinguishing characteristics like the height, weight, built, complexion, hair, moles, mustache, etc. of the assailants, not to mention the attire or the color of their clothing, individual mannerisms or gestures, accessories, if any, that could perhaps specifically identify the petitioners as the assailants. There was of course private respondent Pesico's account that one of the assailants had a strong Visayan accent, fierce eyes and pointed face but such was rather too general a description to discriminate petitioners against a thousand and one suspects who would similarly possess such description. Furthermore, while private respondent Pesico claimed to have seen the faces of both the assailant, there was only one cartographic sketch of one suspect. Oddly enough, the cartographic sketch does not even strike any close resemblance to the facial features of anyone of the petitioners.

Fourth, there was sufficient lapse of time between the time of the commission of the crimes when private respondent Pesico allegedly saw the assailants and the time she made her identification. The intervening period, i.e., four (4) days to be exact, was more than sufficient to have exposed what was otherwise accurate and honest perception of the assailants to "extraneous influences", which more or less leads this Court to conclude that

private respondent Pesico's identification of the petitioners could not have been uncontaminated. This, in light of the fact that prior to the identification, private respondent Pesico was part of the joint inspection of the crime scene conducted by the police investigators with the members of the Delgado family, who, at that time floated the "family feud" theory of the case.

Fifth, this Court finds the "photo line-up" identification conducted by the police investigators to be totally unreliable and particularly dangerous, the same being impermissibly suggestive. The pictures shown to private respondent Pesico consisted mainly of the members of the Delgado family, employees and close associates, let alone the fact that in the particular picture from which petitioner Luisito Gonzale[z] was identified by private respondent Pesico as one of the assailants, he was the only male individual. Juxtaposed with the "family feud" angle of the case, there is compelling reason to believe that petitioner Luisito Gonzale[z] was isolated and suggested, wittingly or unwittingly, by the police investigators as a prime suspect in the case.

In sum, this Court is of the view that petitioner Luisito Gonzale[z]'s identification was less than trustworthy and could not have been positive but merely derivative.

x x x

In light of the significant improbabilities, uncertainties and inconsistencies in private respondent Pesico's account, as well as the total unreliability of the identification she made, the petitioners' alibi and denial thus assume commensurate strength. Their alibi and denial assume particular importance in this case as the same are corroborated by no less than twenty-nine (29) impartial and disinterested witnesses. x x x Thus taking into account these 29 sworn statements, it was certainly impossible for the petitioners to have been at the locus criminis. x x x Alibi is not always undeserving of credit, for there are times when the accused has no other possible defense for what could really be the truth as to his whereabouts at the crucial time, and such defense may in fact tilt the scales of justice in his favor.[38]

The Solicitor General, who is now Agnes VST Devanadera, did not appeal the appellate court's Amended Decision which reversed her Resolutions of 15 October 2007 and 26 October 2007 when she was Acting Secretary of Justice. In G.R. No. 184507, the Solicitor General filed a Motion for Extension of Time to file a Petition for Review under Rule 45 before this Court. However, the 30 day extension given had lapsed without the filing of said petition. Thus, the Court, in a Resolution dated 8 December 2008, declared G.R. No. 184507 closed and terminated.

On 10 September 2008, respondents filed with the Court of Appeals an Urgent Motion to Order the Amended Decision dated 29 August 2008 as Immediately Executory.[39]

On 18 September 2008, petitioners filed a Petition for Review under Rule 45 before this Court.[40] Respondents, in connection with the Petition for Review, filed a "Motion for the Release (On Bond, If Required)."

On 2 October 2008, the Court of Appeals issued a Resolution denying the motion filed on 10 September 2008.[41] Thereafter, respondents filed a Motion for Reconsideration.

Meanwhile, on 7 October 2008, the RTC issued an Order suspending the proceedings in Criminal Case No. 07-257487 and effectively deferred the resolution of respondents' Motion for Reconsideration (of the Order dated 3 July 2008) pending a decision by this Court on the Petition for Review filed by petitioners. The RTC also ordered that both respondents remain in custody.[42]

On 5 November 2008, the Court of Appeals issued another Resolution denying the motion for reconsideration of its 2 October 2008 Resolution, stating that with due deference to the Supreme Court as the final arbiter of all

controversies, the Court of Appeals forbids itself from declaring the 29 August 2008 Amended Decision as immediately executory. It held further that since an appeal by certiorari to the Supreme Court had already been filed by petitioners, any motion for execution pending appeal should now be filed with the Supreme Court.[43]

Hence, this petition.

On 10 December 2008, this Court conducted oral arguments to hear the respective parties' sides. In a Resolution dated 17 December 2008, this Court, acting upon the "Motion for the Release (On Bond, If Required)" filed by respondents, ordered the RTC of Manila, Branch 32, to hear respondents' application for bail with deliberate dispatch, since this Court is not in a position to grant bail to respondents as such grant requires evidentiary hearing that should be conducted by the trial court where the murder case is pending.

On 5 January 2009, respondents filed a Motion for Reconsideration of this Court's Resolution dated 17 December 2008. On 16 March 2009, this Court denied the motion for reconsideration and directed the RTC of Manila, Branch 32, to conduct a summary hearing on bail and to resolve the same within thirty (30) days from receipt of the resolution.

The RTC of Manila, Branch 32, issued an Order dated 27 March 2009 setting a hearing on bail on 2 April 2009. On 7 April 2009, respondents filed with this Court a Manifestation Waiving the "Motion for the Release (On Bond, If Required)" dated 17 November 2008. Respondents manifested that they waive and abandon their motion for bail.

The Issues

Petitioners submit the following issues for our consideration:

- Whether petitioners possess the legal standing to sue and whether petitioners can be considered as the real parties in interest; that the DOJ Secretary as represented by the Solicitor General is a mere nominal party; that the "People" as represented by the City Prosecutor of Manila was not an impleaded party before the Court of Appeals; that, unnotified of, and unserved with the amended decision of the Court of Appeals, the "People" is not bound thereby; and that, therefore, neither the Secretary of Justice nor the "People" were called upon to appeal to the Supreme Court.[44]
- Whether the amended decision of the Court of Appeals is final and can be the subject of execution pending appeal.[45]
- Whether the Court of Appeals committed reversible and whimsical errors of law in the amended decision warranting reversal of the same[46] in view of the following reasons:
 - There were plain, speedy and adequate remedies available to respondents prior to their filing of certiorari before the Court of Appeals.[47]
 - The Secretary of Justice did not commit grave abuse of discretion in her determination of probable cause.[48]
 - The Court of Appeals strayed from the determination of grave abuse of discretion and instead evaluated the evidence de novo, and erroneously increased the quantum of evidence required for determining probable cause.[49]
 - The Court of Appeals erroneously substituted its judgment for the Secretary of Justice.[50]
 - The Court of Appeals undermined the jurisdiction of the RTC over the criminal proceedings by virtue of the filing of the Information therein.[51]

The Court's Ruling

On petitioners' standing to file the petition and the finality of the Amended Decision

Petitioners contend that the parties impleaded in the Petition for Certiorari filed by respondents before the Court of Appeals in CA-G.R. SP No. 101196 were Acting Secretary Devanadera, Heirs of Federico C. Delgado and Annalisa D. Pesico. The "People of the Philippines" was never made as one of the parties and neither was it notified through the City Prosecutor of Manila.[52] Petitioners claim that in criminal proceedings where the only issue is probable cause or grave abuse of discretion in relation thereto, the private complainant and the private respondent are the parties. In such proceedings, the "People of the Philippines" is not yet involved as it becomes a party to the main criminal proceedings only when the Information is filed with the trial court.[53]

Petitioners allege that although Informations were filed before the lower courts after respondents filed a Petition for Review with the Court of Appeals, it does not change the reality that all the proceedings before the DOJ, Court of Appeals and this Court involve only the issues on (1) probable cause, (2) the alleged grave abuse of discretion by the Acting Secretary of Justice, and (3) the reversible errors of law and grave abuse of discretion on the part of the Court of Appeals in promulgating the assailed Amended Decision.

It is petitioners' contention that while the Acting Secretary of Justice is a public respondent, she is at best a nominal or pro forma party. Hence, the Solicitor General had no obligation to appeal the case to this Court to represent the Secretary of Justice as a nominal party.[54] Further, the Solicitor General's non-participation in this case is not a fatal defect that jeopardizes petitioners' legal standing as complainants in the preliminary investigation proceedings, appellants before the Secretary of Justice, respondents in the Court of Appeals and petitioners before this Court.[55]

Petitioners state that they are the real parties in interest who can naturally be expected to file a case for the death of their brother. Citing *Narciso v. Sta. Romana-Cruz*,[56] petitioners claim that a sister of the deceased is a proper party-litigant who is akin to the offended party.

Respondents argue that petitioners cannot claim that the instant proceeding is not part of the criminal case proper because the preliminary investigation has already been concluded.[57] Quoting Section 9 of the 2000 National Prosecution Service Rule on Appeal,[58] respondents claim that an information may be filed even if the review of the resolution by the Secretary of Justice is still available. The preliminary investigation, having been concluded, the private offended parties no longer have the personality to participate by themselves in the succeeding proceedings. Respondents insist that when petitioners asserted their right to prosecute a person for a crime, through the filing of an information, the State, through its prosecutorial arm, is from that point on, the only real party in interest.[59]

Respondents maintain that only the Solicitor General may represent the State in appellate proceedings of a criminal case.[60] The Acting Secretary of Justice cannot be properly characterized as a nominal party because it is the real party in interest, whose right to prosecute offenses is at stake. The Acting Secretary of Justice, in issuing a resolution that there is probable cause to charge a person with an offense, asserts the right of the State to prosecute a person for the commission of a crime.[61] Thus, the participation of the private offended parties before the Court of Appeals is not necessary for complete relief to be had, and it is certainly not indispensable for a final determination of the case.[62]

Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its

officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. Likewise, the Solicitor General shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings, thus:

Section 35. Powers and Functions. -- The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings ; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

The law clearly requires the Office of the Solicitor General to represent the Government in the Supreme Court in all criminal proceedings before this Court. As in every case of statutory construction, we begin our analysis by looking at the plain and literal language of the term "criminal proceeding." Criminal proceeding is defined as "a proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment." [63] Proceeding is defined as "any procedural means for seeking redress from a tribunal or agency. It is the business conducted by a court or other official body." [64]

Section 1(a) of Rule 110 of the Rules of Court provides:

Section 1. Institution of criminal actions. -- Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

It should be observed that a criminal action shall be instituted by filing the complaint with the proper officer for the purpose of conducting the preliminary investigation. In this case, the criminal action was instituted when Alejandro Yanquiling, Jr., Chief of the Homicide Section of the MPD filed the Complaint-Affidavit with the Office of the City Prosecutor of Manila. [65] The Complaint-Affidavit was supported by Pesico's sworn statement, affidavit of consent from the heirs of Delgado, crime report, progress report, SOCO report, and cartographic sketch. [66]

Preliminary investigation, although an executive function, is part of a criminal proceeding. In fact, no criminal proceeding under the jurisdiction of the Regional Trial Court is brought to trial unless a preliminary investigation is conducted. We explained, thus:

' [T]he right to have a preliminary investigation conducted before being bound over for trial for a criminal offense, and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right.' A preliminary investigation should therefore be scrupulously conducted so that the constitutional right to liberty of a potential accused can be protected from any material damage. [67]

In *Ricafort v. Fernan*, [68] this Court had the occasion to rule:

As stated by counsel for the respondents, the petition herein is an offshoot, an incident of said criminal case for qualified theft. For all purposes, therefore, it is a continuation of that case and partakes of the nature of a criminal proceeding. This being so, the party defeated by the order of the respondent Judge dismissing the information in Criminal Case No. 2819 of the court of First Instance of Davao must be the People of the

Philippines and not the petitioner, the complaining witness. Consequently, the proper party to bring this petition is the State and the proper legal representation should be the Solicitor General and not the attorney for the complaining witness who was the private prosecutor in said Criminal Case No. 2819. It is true that under the Rules of Court the offended party may take part in the prosecution of criminal cases and even appeal in certain instances from the order or judgment of the courts, but this is only so in cases where the party injured has to protect his pecuniary interest in connection with the civil liability of the accused. Petitioner did not institute the case at bar for the purpose of protecting his pecuniary interest as supposed offended party of the crime charged in the information that was dismissed, but to cause the restoration of the case and to have it tried as if nothing had happened. This, certainly, falls within the province of the representative of the People who in this case has not appealed nor joined the private prosecutor in bringing this case before Us.

Based on the above discussion, the term criminal proceeding includes preliminary investigation. In any event, this issue is academic because on 30 October 2007, the Informations against respondents were filed with the trial court. Petitioners admit that the "People of the Philippines" becomes a party in interest in a criminal proceeding when an information is filed with the trial court.

We have ruled in a number of cases^[69] that only the Solicitor General may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before the Supreme Court and the Court of Appeals. However, jurisprudence lays down two exceptions where a private complainant or offended party in a criminal case may file a petition directly with this Court. The two exceptions are: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party,^[70] and (2) when the private offended party questions the civil aspect of a decision of a lower court.^[71]

The first exception contemplates a situation where the State and the offended party are deprived of due process because the prosecution is remiss in its duty to protect the interest of the State and the offended party. This Court recognizes the right of the offended party to appeal an order of the trial court which denied him and the State of due process of law.

In *Merciales v. Court of Appeals*,^[72] this Court granted the petition of the offended party and ruled as invalid the dismissal of the case in the trial court for lack of a fundamental prerequisite, that is, due process. The public prosecutor who handled the case deliberately failed to present an available witness which led the trial court to declare that the prosecution had rested its case. In this sense, the public prosecutor was remiss in his duty to protect the interest of the offended party. As a result, the public prosecutor was found guilty of blatant error and abuse of discretion, causing prejudice to the offended party. The trial court was likewise found guilty for serious nonfeasance for passively watching the public prosecutor bungle the case notwithstanding its knowledge that the evidence for the prosecution was insufficient to convict and it could have, *motu proprio*, called for additional witnesses. Thus, petitioner, who was the mother of the private offended party in the criminal cases for rape with homicide, had been deprived of her day in court. She could do nothing during the proceedings, having entrusted the conduct of the case in the hands of the public prosecutor. All she could do was helplessly watch as the public prosecutor, who was under legal obligation to pursue the action on the family's behalf, renege on that obligation and refuse to perform his sworn duty. This Court explained that it is not only the State, but also the offended party, that is entitled to due process in criminal cases. The issue on whether private complainant can bring an action was, however, rendered moot when the Solicitor General, in representation of the People, changed his position and joined the cause of petitioner, thus fulfilling the requirement that all criminal actions shall be prosecuted under the direction and control of the public prosecutor.

Likewise, in *People v. Nano*,^[73] this Court took cognizance of the offended party's petition because of the gravity of the error committed by the judge against the prosecution resulting in denial of due process. Aside from

the denial of due process, the Solicitor General also manifested to adopt the petition as if filed by his office. Thus, we ruled in *Nano*:

The petition being defective in form, the Court could have summarily dismissed the case for having been filed merely by private counsel for the offended parties, though with the conformity of the provincial prosecutor, and not by the Solicitor General. While it is the public prosecutor who represents the People in criminal cases before the trial courts, it is only the Solicitor General that is authorized to bring or defend actions in behalf of the People or Republic of the Philippines once the case is brought up before this Court or the Court of Appeals (*People v. Calo*, 186 SCRA 620 [1990]; citing *Republic v. Partisala*, 118 SCRA 320 [1982]; *City Fiscal of Tacloban v. Espina*, 166 SCRA 614 [1988]). Defective as it is, the Court, nevertheless, took cognizance of the petition in view of the gravity of the error allegedly committed by the respondent judge against the prosecution - denial of due process - as well as the manifestation and motion filed by the Office of the Solicitor General praying that the instant petition be treated as if filed by the said office. In view thereof, We now consider the People as the sole petitioner in the case duly represented by the Solicitor General. Payment of legal fees is therefore no longer necessary in accordance with Sec. 16, Rule 141 of the Rules of Court. (Emphasis supplied)

In the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, who is not satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the Solicitor General.

In *Mobilia Products, Inc. v. Umezawa*,^[74] we ruled that in criminal cases, the State is the offended party. Private complainant's interest is limited to the civil liability arising therefrom. We explained:

Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.

In *De la Rosa v. Court of Appeals*,^[75] citing *People v. Santiago*,^[76] we held:

In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of said complainant.

These two exceptions do not apply in this case.

In the Memorandum, petitioners allege that the Court of Appeals committed reversible and whimsical errors of law in the Amended Decision. Petitioners raised the following errors:

- There were plain, speedy and adequate remedies available to respondents prior to their filing of certiorari before the Court of Appeals.^[77]
- The Secretary of Justice did not commit grave abuse of discretion in her determination of probable cause.^[78]
- The Court of Appeals strayed from the determination of grave abuse of discretion and instead evaluated the

evidence de novo, and erroneously increased the quantum of evidence required for determining probable cause.[79]

- The Court of Appeals erroneously substituted its judgment for the Secretary of Justice.[80]
- The Court of Appeals undermined the jurisdiction of the RTC over the criminal proceedings by virtue of the filing of the Information therein.[81]

Petitioners do not claim that the failure of the Solicitor General to appeal the Court of Appeals' decision before this Court resulted in the denial of due process to the State and the petitioners. Petitioners do not assert that the prosecution and the Solicitor General were remiss in their duty to protect the interest of the State and the offended party. Neither do petitioners claim that the Solicitor General is guilty of blatant error or abuse of discretion in not appealing the Court of Appeals' decision.

The Solicitor General did not manifest to adopt petitioners' appeal before this Court. On the contrary, the Solicitor General manifested on 3 December 2008 its refusal to participate in the oral arguments of this case held on 10 December 2008. This Court cannot take cognizance of the petition because there is clearly no denial of due process to the State and the petitioners. In short, the first exception does not apply because petitioners do not claim, and neither is there any showing in the records, that the State and the petitioners have been denied due process in the prosecution of the criminal cases.

The Solicitor General, on 19 September 2008, had filed before this Court a Motion for Extension of Time to file a Petition for Review under Rule 45, docketed as G.R. No. 184507. However, the 30-day extension given had lapsed without the filing of the petition.[82] Consequently, this Court, in a Resolution dated 8 December 2008, declared G.R. No. 184507 closed and terminated.

Petitioners are also not appealing the civil aspect of the criminal case since the lower courts had not yet decided the merits of the case. In *People v. Santiago*,^[83] this Court explained that in criminal cases where the offended party is the State, the interest of the private offended party is limited to the civil liability. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal from the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private complainant or offended party may not appeal the criminal, but only the civil, aspect of the case.

Here, since there was no decision promulgated on the merits by the lower court and the Informations had been quashed, petitioners have nothing to appeal on the civil aspect that is deemed impliedly instituted with the criminal cases. There is no longer any criminal case on which a civil case can be impliedly instituted. Petitioners' recourse is to file an independent civil action on their own.

On 31 March 2009, the Solicitor General filed a Motion for Leave to Admit Attached Comment in G.R. No. 184337.^[84] The Solicitor General reasoned that she opted not to file a petition for review in G.R. No. 184507 because she learned that a similar petition was filed before she could prepare the intended petition for review. In her comment, the Solicitor General stated that she is not a direct party to the case. However, the Solicitor General alleged that she would file a comment as it is undeniable that she issued the Resolutions of the Department of Justice at the time she held the position of Acting Secretary of Justice concurrent with her being the Solicitor General. The Solicitor General submitted that her position on the issue of probable cause should be heard.

On 17 April 2009, respondents filed an Opposition and Motion to Strike "Motion for Leave to Admit Attached Comment" and "Comment." Respondents contended that the Solicitor General is not a party to the case and has no personality to participate in any manner. Respondents claimed that the Solicitor General failed to file a Petition

for Review on Certiorari within the prescribed period and she cannot now use a "Comment" as a substitute for a lapsed appeal.

In a Resolution dated 1 June 2009, this Court expunged from the records the motion for leave to admit attached comment and the aforesaid comment filed by the Solicitor General. The Court ruled that the Solicitor General is not a party in G.R. No. 184337.

We reiterate that it is only the Solicitor General who may bring or defend actions on behalf of the State in all criminal proceedings before the appellate courts. Hence, the Solicitor General's non-filing of a petition within the reglementary period before this Court rendered the assailed decision of the Court of Appeals final and executory with respect to the criminal aspect of the case. The Solicitor General cannot trifle with court proceedings by refusing to file a petition for review only to subsequently, after the lapse of the reglementary period and finality of the Amended Decision, file a comment.

In view of our holding that petitioners have no standing to file the present petition, we shall no longer discuss the other issues raised in this petition.

WHEREFORE, we DENY the petition. We AFFIRM the 29 August 2008 Amended Decision of the Court of Appeals in CA-G.R. SP No. 101196. No pronouncement as to costs.

SO ORDERED.

ANTONIO T. CARPIO

Associate Justice

WE CONCUR:

Carpio Morales[*], Leonardo-De Castro, and Bersamin, JJ., concur.

Velasco, Jr.[*], J., pls. see dissenting opinion.

[*] Designated additional member per Special Order No. 667.

[*] Designated additional member per Raffle dated 29 September 2008.

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Rollo, pp. 80-102. Penned by Justice Remedios A. Salazar-Fernando, with Justices Rosalinda Asuncion-Vicente and Teresita Dy-Liacco Flores, concurring.

[3] Id. at 62-78. Penned by Justice Enrico A. Lanzas, with Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring.

[4] Id. at 9.

[5] Id. at 400. Affidavit of Consent dated 21 March 2007 given by Jose Mari C. Delgado, brother of the deceased, in behalf of his siblings.

[6] Id. at 396.

[7] Id. at 397. Pesico stated in her first statement that she was Delgado's friend and was picked up by Delgado before ten o'clock in the evening of 10 March 2007 at Burgos St. near Makati Ave., Makati City: "x x x Mga bandang 9:45 ay sinundo ako ni Rico sa may Burgos St., sa Makati Ave. at sumakay ako sa kanyang kotse

papuntang bahay niya sa Leon Guinto. x x x" (Emphasis supplied)

[8] Id. at 398-399. In her second statement, Pesico called Delgado as her boyfriend: "x x x Ako po ang nagbigay ng kaukulang impormasyon para maiguhit ng cartographer ang mukha ng lalaki na isa sa pumatay sa aking nobyo na si Federico Delgado noong gabi ng ika-10 ng Marso 2007 sa gusali ng May Flower. x x x" (Emphasis supplied)

[9] Id. at 401-403.

[10] Id. at 168.

[11] Id. at 404-411.

[12] Id. at 412-421.

[13] Id. at 422.

[14] Id. at 423.

[15] Id. at 424-443.

[16] Id. at 444.

[17] Id. at 445-446.

[18] Id. at 447-449.

[19] Id. at 450-455.

[20] Id. at 456-459.

[21] Id. at 460.

[22] Id. at 461-462.

[23] Id. at 463-465.

[24] Id. at 466.

[25] Id. at 467-550 and 616-647.

[26] Id. at 551-615.

[27] Id. at 652-760.

[28] Id. at 648-650.

[29] Id. at 68-72 and 169-170.

[30] Id. at 103-110.

[31] Id. at 171.

[32] Id.

[33] Id. at 172.

[34] Id. at 72-77.

[35] Id. at 172.

[36] Id. at 113-114.

[37] Id. at 820 and 835.

[38] Id. at 90-101.

[39] Id. at 121-132.

[40] Id. at 3-54.

[41] Id. at 839.

[42] Id. at 389-395.

[43] Id. at 839-841.

[44] Id. at 958.

[45] Id. at 971.

[46] Id. at 976.

[47] Id.

[48] Id. at 980.

[49] Id. at 985.

[50] Id. at 991.

[51] Id. at 997.

[52] Id. at 965.

[53] Id. at 959-960.

[54] Id. at 960-961.

[55] Id. at 964-965.

[56] 385 Phil. 208, 224 (2000).

[57] Rollo, p. 1022.

[58] Department of Justice Circular No. 70 dated 1 September 2000.

Section 9. Effect of an appeal. Unless the Secretary of Justice directs otherwise, the appeal shall not hold the filing of the corresponding information in court on the basis of the finding of probable cause in the appealed resolution.

[59] Rollo, pp. 1024-1025.

[60] Id. at 1029.

[61] Id. at 1030.

[62] Id. at 1037.

[63] Black's Law Dictionary, 7[th] ed., 1999.

[64] Id.

[65] Rollo, p. 396.

[66] Id. at 397-423.

[67] Webb v. Hon. De Leon, 317 Phil. 758, 803 (1995).

[68] 101 Phil. 575, 579-580 (1957).

[69] Cariño v. De Castro, G.R. No. 176084, 30 April 2008, 553 SCRA 688; Perez v. Hagonoy Rural Bank, Inc., 384 Phil. 322 (2000); Columbia Pictures Entertainment, Inc. v. Court of Appeals, G.R. No. 111267, 20 September 1996, 262 SCRA 219; People v. Mendoza, G.R. No. 80845, 14 March 1994, 231 SCRA 264; People v. Nano, G.R. No. 94639, 13 January 1992, 205 SCRA 155; People v. Calo, Jr., G.R. No. 88531, 18 June 1990, 186 SCRA 620; People v. Eduarte, G.R. No. 88232, 26 February 1990, 182 SCRA 750.

[70] Cariño v. De Castro, G.R. No. 176084, 30 April 2008, 553 SCRA 688, 696.

[71] People v. Santiago, G.R. No. 80788, 20 June 1989, 174 SCRA 143.

[72] 429 Phil. 70 (2002).

[73] G.R. No. 94639, 13 January 1992, 205 SCRA 155, 159.

[74] 493 Phil. 85, 108 (2005).

[75] 323 Phil. 596, 605 (1996).

[76] Supra note 71.

[77] Rollo, p. 976.

[78] Id. at 980.

[79] Id. at 985.

[80] Id. at 991.

[81] Id. at 997.

[82] The extended period expired on 19 October 2008.

[83] Supra note 71.

[84] Rollo, pp. 1100-1104.

DISSENTING OPINION

VELASCO, JR., J.:

I register my dissent to the majority opinion on the main ground that the Court should have entertained and resolved the petition on the merits.

It is conceded that only the Solicitor General may bring and defend actions in behalf of the Republic of the Philippines or represent the State in criminal actions before this Court.[1] As stated in the ponencia, this general rule admits of two exceptions: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party;[2] and (2) when the private offended party questions the civil aspect of a decision of the lower court.[3]

I submit that the instant petition falls under the first exception wherein there was negation of due process which prejudiced the State and the private offended party when the Office of the Solicitor General (OSG) failed for unexplained reasons to file the petition for the State within the extended period. As an equitable gesture, the OSG could have simply filed a manifestation adopting the instant petition and requesting that petitioners' initiatory pleading before this Court be treated as if filed by said office.

The instant petition has unique and special circumstances that justify adjudication on the merits. The antecedents reveal that Investigating Prosecutor Cielitolindo A. Layun dismissed the complaint for lack of probable cause. On September 18, 2007, Acting Justice Secretary Agnes VST Devanadera who was concurrently the Solicitor General reversed the finding of the Investigating Prosecutor and directed the filing of separate informations for murder and less serious physical injuries against respondents. The plea for reconsideration was denied on October 18, 2007.

On October 30, 2007, the informations were filed with the Regional Trial Court of Manila, Branch 32.

The Court of Appeals (CA), acting on the petition of respondents under Rule 65 in CA-G.R. SP No. 101196, found no grave abuse of discretion on the part of the Acting Justice Secretary and dismissed the petition on March 18, 2008. On August 29, 2008, however, the CA, in an Amended Decision, granted the Motion for Reconsideration of respondents and ordered that the informations against them be quashed and dismissed.

The OSG did not appeal the August 29, 2008 CA Amended Decision which reversed Acting Secretary Devanadera's Resolutions of October 15, 2007 and October 26, 2007. In G.R. No. 184507, the OSG moved for an extension of 30 days within which to file a petition for review but no petition was filed within the 30-day extension. On the other hand, petitioner filed a petition under Rule 45 with this Court on September 18, 2008, without any conformity of the OSG. Neither did the OSG adopt the instant petition filed by petitioners.

In this factual milieu, it is submitted that there was denial of due process to the State and the private offended party. It is settled in this jurisdiction that due process means a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. We held that "[d]ue process contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property. It is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality. For substance must prevail over form."^[4]

Clearly, the essence of due process is the opportunity to be heard.

Moreover, it has been explained in *Santiago v. Alikpala*^[5] that due process is "responsiveness to the supremacy of reason" and "obedience to the dictates of justice." Opportunity to be heard must be granted to a party to prevent arbitrariness and avoid unfairness.

The Court in *Santiago* ratiocinated this way:

To satisfy the due process requirement official action must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. It has been identified as freedom from the arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty to those strivings for justice and judges the act of officialdom of whatever branch in the light of reason drawn from considerations of fairness that reflect democratic traditions of legal and political thought.

When the OSG failed to file the petition in G.R. 184507 to question the August 29, 2008 CA Amended Decision and even declined to adopt the petition of petitioners in G.R. No. 184337, the State and the private offended parties, herein petitioners, were deprived of their opportunity to be heard on the flip-flopping posture of the CA on the issue of probable cause. It was expected that the OSG will pursue the position it has taken before the CA that

probable cause exists and should have proceeded to assail the August 29, 2008 CA Amended Decision since it overruled said OSG's postulation. With the inability of OSG to file the petition in question, the State and petitioners were unfairly deprived of their right to have the August 29, 2008 decision reviewed by this Court. Moreover, the OSG's position before the CA was the same ruling made by the then Acting Justice Secretary, who was also the Solicitor General, that indeed probable cause exists to indict respondents.

More importantly, in view of the conflicting CA decisions, it would be to the best interests of the State and the parties to have the conflicting decisions reviewed by this Court to settle once and for all the correctness of the ruling on the determination of probable cause against respondents. The failure of OSG to file the petition in G.R. No. 184507 certainly prejudiced the rights of the State and the private offended parties to due process of law. In this light, I find that the petition should have been entertained by this Court to accommodate a judgment on the merits.

Even granting arguendo that the factual setting of this petition does not fall under any of the two (2) exceptions adverted to, the instant petition should have been given due course as the Court can suspend the rules to prevent a miscarriage of justice. The facts reveal that there is an eyewitness to the killing, Annalisa Pesico. Settled jurisprudence is to the effect that positive identification is preferred over alibi and denial. With this in mind, the best course of action to take is to direct the trial court to proceed with the trial and decide the case after full presentation and reception of evidence. What is required in a preliminary investigation is only the finding of probable cause and not the determination of guilt beyond a reasonable doubt. This is the better course of action to take since the case is already pending before the RTC Manila. The CA, in its assailed August 29, 2008 Amended Decision, has veritably ruled on the merits of the criminal case. This is not the proper course of action to take. What was before the CA was solely the issue of probable cause and not an appeal to review the merits of the criminal case which has not yet taken off the ground. In the interest of fairness, I submit that the unique antecedents and facts of the case justify the grant of due course to the instant petition.

Even if the petition filed by petitioners should be denied, still, the fallo of the August 29, 2008 Amended Decision should be corrected. The CA should not have dismissed the informations, but should have simply ruled that no probable cause exists against respondents and then directed the trial prosecutor to move for the dismissal of the criminal cases before the trial court, following *Crespo v. Mogul*[6] and *Roberts, Jr. v. CA*.[7] Be it remembered that CA-G.R. SP No. 101196 was a petition for certiorari and prohibition not to assail any order of the Manila RTC, but to nullify the resolutions of the Acting Justice Secretary Devanadera, finding, contrary to the earlier determination of the investigating prosecutor, a probable cause to charge respondents with murder and serious physical injuries, and directing the filing of the necessary informations.

The eminent Justice Emilio A. Gancayco, in the celebrated case of *Crespo*, explained the exercise of a court's jurisdiction over a criminal case once the information is filed:

However, the action of the fiscal or prosecutor is not without any limitation or control. The same is subject to the approval of the provincial or city fiscal or the chief state prosecutor as the case maybe (sic) and it maybe (sic) elevated for review to the Secretary of Justice who has the power to affirm, modify or reverse the action or opinion of the fiscal. Consequently the Secretary of Justice may direct that a motion to dismiss the case be filed in Court or otherwise, that an information be filed in Court.

The filing of a complaint or information in Court initiates a criminal action. The court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.

The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi judicial discretion to determine whether or not a criminal case should be filed in the court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. 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.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.[8] (Emphasis supplied.)

Roberts, Jr. reinforced Crespo this way:

This case is already pending in this Court for trial. To follow whatever opinion the Secretary of Justice may have on the matter would undermine the independence and integrity of this Court. This Court is still capable of administering justice.

The real and ultimate test of the independence and integrity of his court is not the filing of the aforementioned motions at that stage of the proceedings but the filing of a motion to dismiss or to withdraw the information of the basis of a resolution of the petition for review reversing the Joint Resolution of the investigating prosecutor. Before that time, the following pronouncement in Crespo did not yet truly become relevant or applicable:

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court [which] has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

However, once a motion to dismiss or withdraw the information is filed the trial judge may grant or deny it, not out of subservience to the Secretary of Justice, but in faithful exercise of judicial prerogative. This Court pertinently stated so in *Martinez vs. Court of Appeals*:

Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

As aptly observed the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp

in violation of the ruling in *Crespo vs. Mogul*.^[9] (Emphasis supplied.)

The assailed CA Amended Decision of August 29, 2008 directly nullified the informations now pending before the Manila RTC, Branch 32, and was a blatant breach of the *Crespo* ruling, as fortified by *Roberts, Jr.*, which has remained the established doctrine for more than 20 years and has not since been modified or abandoned. The August 29, 2008 CA Amended Decision should be set aside.

For the above reasons, I vote to give due course to the petition.

[1] *Cariño v. De Castro*, G.R. No. 176084, April 30, 2008, 553 SCRA 688.

[2] *Id.*

[3] *People v. Santiago*, G.R. No. 80778, June 20, 1989, 174 SCRA 143.

[4] *Albert v. CFI of Manila*, No. L-26364, May 29, 1968, 23 SCRA 948.

[5] No. L-25133, September 28, 1968, 25 SCRA 356.

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

[7] G.R. No. 113930, March 5, 1996, 254 SCRA 307.

[8] *Supra* note 6.

[9] *Supra* note 7, at 333.

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