

P/C SUPT. EDWIN A. PFLEIDER, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 208001. June 19, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

This is to resolve the Petition for Review on Certiorari under Rule 45 of the Rules of Court, dated July 23, 2013, of petitioner P/C Supt. Edwin A. Pfleider (Ret.) assailing the Decision dated October 23, 2012 and Resolution dated June 26, 2013, both of the Court of Appeals (CA).

The facts follow.

An Information for Murder against petitioner and Ryan Bautista was filed on April 18, 2011 before the Regional Trial Court (RTC) of Tacloban City, which reads as follows:

That on or about the 15[th] day of September 2010 or prior thereto, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and by offering a price, reward or consideration to Ryan O. Bautista (Crim. Case No. 2010-09-497) and mutually helping one another, with intent to kill and with the qualifying circumstance of treachery, evident premeditation, while Ryan O. Bautista was armed with an unlicensed firearm, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one Manuel Granados with the use of said unlicensed firearm and inflicting upon the said victim fatal wounds on different parts of his body, which resulted to his untimely death, to the damage and prejudice of his heirs.

CONTRARY TO LAW.

The RTC dismissed the case for lack of probable cause against petitioner in a Resolution dated September 5, 2011.

The prosecution filed a Motion for Reconsideration on September 26, 2011 praying for the reinstatement of the case, but the Court denied the said motion on October 26, 2011.

A petition for certiorari under Rule 65 of the Rules of Court was therefore filed with the CA. The petition was grounded on grave abuse of discretion amounting to lack or excess of jurisdiction, since (a) the questioned resolution and order: (i) discarded and ignored vital evidence and the authority of the public prosecutor in determining the existence of probable cause; (ii) excluded the extra-judicial confession executed by petitioner's co-accused, Ryan Bautista, despite the presumed voluntariness and due execution thereof; and (iii) failed to give weight and consideration to other vital pieces of evidence evincing trustworthiness of Bautista's extra-judicial confession and establishing petitioner's complicity; and (b) the manifest presence of probable cause supports the charge of murder as against petitioner.

On March 19, 2012, petitioner filed his Comment/Opposition and, on April 23, 2012, respondent filed its Reply to which petitioner filed a Rejoinder dated May 23, 2012.

The CA, in its Decision dated October 24, 2012, set aside the September 5, 2011 Resolution and October 26, 2011 Order of the trial court, and directed the reinstatement of the Information for Murder against petitioner.

Petitioner, on November 26, 2012, filed a Motion for Reconsideration on the CA's decision. Respondent, on the other hand, filed an Urgent Motion for the Issuance of a Warrant of Arrest on November 29, 2012. Petitioner responded by filing an Opposition dated December 8, 2012, and a Supplemental Motion for Reconsideration dated January 24, 2013. In a Resolution dated February 4, 2013, the CA resolved, among others, to Note the Office of the Solicitor General's (OSG) Motion for the Issuance of a Warrant of Arrest.

On March 7, 2013, respondent filed its Comment to petitioner's motion for Reconsideration and Supplemental Motion and, in response, petitioner filed his Reply dated March 21, 2013.

The CA, in a Resolution dated June 26, 2013, denied the Motion for Reconsideration for lack of merit, there being no legal and factual basis for the Court to depart from its earlier ruling reinstating Criminal Case No. 2011-04-286 for Murder against petitioner.

Hence, the present Petition.

This Court, in a Resolution dated September 2, 2013, resolved "to DENY the petition and AFFIRM the ruling of the Court of Appeals promulgated on October 23, 2012 for failure to show any reversible error committed by it when it held that the Regional Trial Court, Branch 9 of Tacloban City committed grave abuse of discretion in dismissing the case against Edwin A. Pfeider despite the presence of probable cause linking him as one of the perpetrators of the crime charged against him." [1] Thus, petitioner filed a Motion for Reconsideration dated October 8, 2013. [2]

In a Resolution dated December 11, 2013, this Court resolved to "GRANT the Motion for Reconsideration and SET ASIDE the Resolution dated September 2, 2013, REINSTATE the petition and to require the Office of the Solicitor General to COMMENT thereon within ten (10) days from notice." [3]

A Motion for Extension [4] dated February 4, 2014 was filed by the OSG which was granted by this Court in its Resolution [5] dated March 24, 2014.

The OSG filed its Comment [6] dated April 2, 2014, while the petitioner filed his Reply [7] dated May 15, 2014.

Petitioner raises the following Assignment of Errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING DUE COURSE AND NOT DISMISSING THE PETITION FOR CERTIORARI FILED BY THE OFFICE OF THE SOLICITOR GENERAL AS THE SAME IS NOT THE PROPER REMEDY, AND CANNOT BE AVAILED OF AS A SUBSTITUTE FOR THE LOST REMEDY OF AN APPEAL;

II.

ASSUMING THAT PETITION FOR CERTIORARI CAN BE AVAILED IN LIEU OF A LOST APPEAL, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON OF BRANCH 9, REGIONAL TRIAL COURT, TACLOBAN CITY, COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE DISMISSED THE CRIMINAL CASE FOR MURDER WITH NO. 2011-04-268 AGAINST HEREIN PETITIONER FOR LACK OF PROBABLE CAUSE;

III.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON ARROGATED UPON HIMSELF THE EXECUTIVE FUNCTION OF DETERMINING PROBABLE CAUSE, AND ALLEGEDLY ASSUMED THE POWER TO PROSECUTE VESTED IN THE EXECUTIVE DEPARTMENT; AND

IV.

THE HONORABLE COURT OF APPEALS LIKewise ERRED IN HOLDING THAT PROBABLE CAUSE EXISTS, AND THAT PROSECUTION WAS ALLEGEDLY ABLE TO PROFFER SUFFICIENT BASIS TO ESTABLISH, MORE LIKELY THAN NOT, A LINK BETWEEN PETITIONER AND RYAN BAUTISTA WITH RESPECT TO THE KILLING OF MANUEL GRANADOS.

The OSG, in its Comment, posited the following arguments:

I.

A SPECIAL CIVIL ACTION FOR CERTIORARI UNDER RULE 65 IS THE PROPER REMEDY TO CORRECT ERRORS OF JURISDICTION WHICH, IN THIS CASE, ARE DEMONSTRATED BY THE TRIAL COURT IN:

A. EXERCISING THE EXECUTIVE FUNCTION OF DETERMINING THE EXISTENCE OF PROBABLE CAUSE IN SUPPORT OF THE MURDER CHARGE;

B. IGNORING AND DISREGARDING THE EXTRA- JUDICIAL CONFESSION OF PETITIONER'S CO-ACCUSED, RYAN BAUTISTA; AND

c. REJECTING THE SAID EXTRA-JUDICIAL CONFESSION DESPITE ITS PRESUMED AND MANIFEST VOLUNTARINESS AND DUE EXECUTION;

II.

WELL ENTRENCHED IS THE RULE THAT MINOR AND TRIVIAL INCONSISTENCIES IN THE STATEMENTS OF PROSECUTION WITNESSES DO NOT WEAKEN, BUT RATHER STRENGTHEN THEIR CREDIBILITY;

III.

THE EVIDENCE ON RECORD SHOWS THAT, MORE LIKELY THAN NOT, CRIME CHARGED HAS BEEN COMMITTED AND THAT RESPONDENT IS PROBABLY GUILTY OF THE SAME, THE JUDGE SHOULD NOT DISMISS THE CASE;

IV.

THE CIDG IS PRESUMED TO HAVE PERFORMED ITS OFFICIAL FUNCTIONS REGULARLY AND IN ACCORDANCE WITH LAW.

Basically, what the petitioner and the respondent want from this Court is for it to review the facts and to finally determine whether a probable cause really exists in the case against petitioner for murder.

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[8] This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final.[9] There are, however, exceptions to this rule. Among the exceptions are enumerated in

Brocka v. Enrile.[10]

However, a close examination of the arguments presented by both parties would show that the present case does not fall under any of the above-cited exceptions. Furthermore, in this case, this Court is once again confronted with the often raised issue of the difference between the determination of probable cause by the prosecutor on one hand and the determination of probable cause by the judge on the other. To have a clearer view on the matter, see the case of *Mendoza v. People of the Philippines, et al.*[11]

It must be emphasized that this Court is not a trier of facts. The determination of probable cause is and will always entail a review of the facts of the case. The CA, in finding probable cause, did not exactly delve into the facts of the case but raised questions that would entail a more exhaustive review of the said facts. It ruled that, "Questions remain as to why, among all people, Ryan would implicate Pflider as the inducer and why the other witnesses would associate Pflider to the crime." [12] From this query, the CA has raised doubt. Under the Revised Rules on Criminal Procedure,

Section 6. When warrant of arrest may issue. — (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 if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 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 of information.[13]

In this case, the judge of the RTC, not finding the existence of probable cause, outrightly dismissed the case. The contrasting findings of the CA and the RTC is well noted and from the very provision of the Rules of Court,[14] the remedy, in case of doubt, is for the judge to order the prosecutor to present additional evidence. Therefore, in the interest of justice, this Court finds it appropriate to remand the case to the trial court for its proper disposition, or for a proper determination of probable cause based on the evidence presented by the prosecution. This is not the first time that this Court has remanded a case to the trial court for it to make a ruling on whether certain Informations should be dismissed or not.[15]

Thus, it is my view that the Petition for Review on Certiorari under Rule 45 of the Rules of Court, dated July 23, 2013, of petitioner P/C Supt. Edwin A. Pflider (Ret.), should have been granted in so far as his prayer to set aside the Decision dated October 23, 2012 and Resolution dated June 26, 2013, both of the Court of Appeals; and for this Court to order that this case be remanded to the Regional Trial Court of Tacloban City for the judicial determination of probable cause and the proper disposition of the same case. However, in view of the demise of P/C Supt. Edwin A. Pflider on April 15, 2017, which effectively extinguished his criminal liability, this case had been rendered moot and academic. Thus, the criminal action against him should just be dismissed, and deemed closed and terminated inasmuch as there is no longer a defendant to stand as the accused.

WHEREFORE, the Petition for Review on Certiorari under Rule 45 of the Rules of Court, dated July 23, 2013 of petitioner P/C Supt. Edwin A. Pflider (Ret.) is hereby GRANTED insofar as his prayer to SET ASIDE the Decision dated October 23, 2012 and Resolution dated June 26, 2013, both of the Court of Appeals. However, considering the demise of P/C Supt. Edwin A. Pflider, instead of remanding the case to the Regional Trial Court of Tacloban city for the determination of probable cause, the criminal action is DISMISSED, there being no defendant to stand as accused.[16]

SO ORDERED

Mendoza, Perlas-Bernabe, and Leonen, JJ., concur.
Velasco, Jr., (Chairperson), J., please see dissenting opinion.

August 8, 2017

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 19, 2017 a Resolution, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 8, 2017 at 2:00 p.m.

Very truly yours,

(SGD.) WILFREDO V. LAPITAN
Division Clerk of Court

[1] Rollo, p. 909.

[2] Id. at 912-978.

[3] Id. at 979.

[4] Id. at 980-985.

[5] Id. at 986.

[6] Id. at 987-1035.

[7] Id. at 1043-1113.

[8] Roberts, Jr. v. CA, 324 Phil. 568, 615 (1996).

[9] Id.

[10] G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189.

a. To afford adequate protection to the constitutional rights of the accused (Hernandez v. Albano, et al., 125 Phil. 513 [1967].

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (Dimayuga, et al. v. Fernandez, 43 Phil. 304 [1922]; Hernandez v. Albano, supra; Fortun v. Labang, et al., 192 Phil. 125 [1981];

c. When there is a pre-judicial question which is sub judice (De Leon v. Mabanag, 70 Phil. 202 [1940]); [1938]);

d. When the acts of the officer are without or in excess of authority (Planas v. Gil, 67 Phil. 62 [1938]);

e. Where the prosecution is under an invalid law, ordinance or regulation (Young v. Rafferty, 33 Phil. 556

- [1916]; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389 [1925]);
- f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140 [1960]);
- g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, 124 Phil. 1211 [1996]).
- h. Where it is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);
- i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J., [1953], cited in *Rañoa v. Alvendia*, CA-G.R. No. 30720-R, October 8, 1962; Cf. *Guingona, Jr., et al. v. City Fiscal of Manila, et al.*, 213 Phil. 516 [1984]); and
- j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (*Salonga v. Paño, et al.*, L-59524, February 18, 1985, 134 SCRA438).

[11] 733 Phil. 603 (2014).

[12] Rollo, p. 125.

[13] Sec. 6, Rule 112.

[14] Id. (Emphasis ours)

[15] See *People of the Philippines, et al. v. Panfilo M. Lacson.*, 432 Phil. 113, 131 (2002).

[16] See *People v. Layag*, G..R. No. 214875, October 17, 2016. See also Article 89 (1) of the Revised Penal Code.

DISSENTING OPINION

VELASCO, JR., J.:

I respectfully register my dissent from the position of the majority.

At the onset, the counsel of petitioner P/C Supt. Edwin A. Pfleider (Pfleider) filed a Manifestation dated April 21, 2017 informing the Court that his client passed away on April 15, 2017. As such, any criminal liability which petitioner Pfleider may have by reason of Criminal Case No. 2011-04-268 had already been extinguished. Nevertheless, the Court, as the final adjudicator, must resolve the petition on its merits in order to fulfill its bounden duty to put an end to unsettled judicial controversies, especially so if it is in the pursuit of clearing the name of an innocent man before he is laid to rest.

Nature of the Petition

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision dated October 23, 2012 and Resolution dated June 26, 2013 issued by the Court of Appeals (CA) in CA-G.R. SP No. 06544. The assailed Decision reversed and set aside the Resolution dated September 5, 2011 and Order dated October 26, 2011 of the Regional Trial Court (RTC) of Tacloban City, Branch 9 in Criminal Case No. 2011-04-268 dismissing the case against petitioner Pfleider for lack of probable cause.

The Facts

This criminal case arose from a Complaint-Affidavit for Murder dated October 6, 2010 filed against petitioner Pfleider before the Department of Justice (DOJ) implicating him in the killing of the victim, Manuel S. Granados (Granados). The Complaint alleged that it was petitioner Pfleider who induced accused Ryan O. Bautista (Bautista) to kill Granados by means of price, reward, or promise.

The facts of the case are as follows:

At around 7:00 a.m. of September 15, 2010, Granados was fatally shot by Bautista in front of his home in Tacloban City. After the shooting, Bautista attempted to flee the crime scene but was unsuccessful because his getaway motorcycle failed to start its engine. A neighbor of the victim, Butch Price, came to the rescue and shot and wounded Bautista. Granados was immediately rushed to the Divine Word Hospital for emergency medical treatment but was declared dead by the attending physician. On the other hand, Bautista was brought to the Eastern Visayas Regional Medical Center for treatment of the gunshot wound he sustained from Butch Price.

On the same day, SPO2 Norman Loy Fevidal interviewed Bautista while the latter was still confined and under medication in the hospital. Bautista executed an extrajudicial confession, or his First Affidavit, in a Question and Answer format based on the interview. In his First Affidavit, Bautista implicated petitioner Pfleider as the alleged mastermind of the assassination. He claimed that Pfleider induced him by means of a price, reward or promise of sixty thousand pesos (P60,000) for the hit.

On September 16, 2010, Rex M. Gillamac (Gillamac) surfaced and gave his statement alleging that he was the one who introduced Bautista to Pfleider. He also claimed that he was with Bautista during a surveillance they conducted on Granados during the second week of July 2010.

On September 17, 2010, a criminal Information for murder was filed against Bautista with the Tacloban City RTC, Branch 9.

On September 18, 2010, Bautista, assisted by Atty. Abet Hidalgo, executed a Second Affidavit, an Affidavit of Recantation, wherein he claimed that the persons who previously interviewed him for his first affidavit were already carrying with them a prepared affidavit implicating Pfleider as the mastermind in the shooting of Granados. He alleged that he was pressured and threatened that he will be executed on an electric chair if he did not agree to implicate petitioner. He also alleged that the First Affidavit was not read to him and the contents thereof were not explained to him. Further, he claimed that he did not know if there was a lawyer present during the time of his first interview and he was not given a copy of said affidavit.

On September 28, 2010, a certain Jimmy Atoy (Atoy), a junkshop helper and mechanic for Maning's Enterprises, executed an affidavit and claimed that the motorcycle used during the shooting incident was bought from the store where he was employed. He further alleged that it was petitioner Pfleider who personally handed him the money to be paid to the cashier Catherine Delos Santos (Catherine) for the purchase of the motorcycle.

On October 6, 2010, Evelyn Granados (Evelyn) and Jeric Dane Granados (Jeric), the wife and daughter of the victim, respectively, filed a Complaint-Affidavit with the DOJ against petitioner Pfleider, alleging that the motive for the crime is business rivalry. Private complainants submitted the First Affidavit of Bautista, the Affidavit of Gillamac dated September 16, 2010, and the Affidavit of Atoy dated September 28, 2010, among others.

In his Counter-Affidavit and Rejoinder-Affidavit dated December 15, 2010 and February 2, 2011, respectively, petitioner Pfleider denied any involvement in the crime. He claimed that the arguments of the complainants were mere suppositions and unwarranted presumptions, speculations, and conjectures. He also stated that the statements of the witnesses were mere afterthoughts and obviously scripted and supplied to suit the malicious case against him. He also said that the allegations were all factually and legally unfounded and, thus, bereft and unworthy of any credence and belief.

During the course of the preliminary investigation, private complainants submitted Bautista's Third Affidavit dated January 12, 2011.

Meanwhile, a Resolution dated April 11, 2011 was issued by Asst. State Prosecutor Rex Gingoyon finding that probable cause for murder against petitioner Pfleider exists, and caused the filing of an Information with the Tacloban City Regional Trial Court, raffled to Branch 9.

On April 19, 2011, petitioner Pfleider filed with the RTC an Omnibus Motion to Defer Proceedings and Issuance of Warrant of Arrest. Subsequently, petitioner Pfleider filed on April 28, 2011 a Manifestation and Supplemental Motion to the Omnibus Motion wherein he attached the Affidavit of one Renato Mendoza[1] (Mendoza) dated April 26, 2011. Mendoza, in his Affidavit, denied the allegation of PO3 Felizardo Sacris (Sacris) that he supplied the caliber .45 pistol MKIV, Series 80 with Serial Number 120876, or any other firearm, to Sacris.

Meanwhile, petitioner Pfleider assailed the findings of Asst. State Prosecutor Gingoyon and filed a petition for review with the DOJ.

After conducting a full evaluation of the evidence submitted by both the prosecution and petitioner Pfleider to determine the existence of probable cause for purposes of issuance of warrant of arrest, the RTC, in a Resolution dated September 5, 2011, dismissed the case against petitioner for lack of probable cause. The dispositive portion of said Resolution states:

WHEREFORE, in view of the foregoing, this Court finds no probable cause against accused P/C SUPT. EDWIN A. PFLEIDER (Ret.) and accordingly, this Court hereby DISMISSES this case.

SO ORDERED.

The Motion for Reconsideration filed by the prosecution was denied in an Order dated October 26, 2011.

On December 23, 2011, respondent People of the Philippines, through the Office of the Solicitor General (OSG), filed a Special Civil Action for Certiorari under Rule 65 of the Revised Rules of Court with the CA.

In the meantime, the Secretary of Justice issued a Resolution dated May 4, 2012 on the petition for review filed by petitioner Pfleider ruling that since the trial court has dismissed the case, which ruling it concurs with, the petition for review has become moot and academic.

In a Decision[2] dated October 23, 2012, the CA granted the Petition for Certiorari reversing and setting aside the RTC's Resolution dated September 5, 2011 and Order dated October 26, 2011. The dispositive portion of the Decision reads:

WHEREFORE, the petition is GRANTED. The September 5, 2011 Resolution and October 26, 2011 Order of the Regional Trial Court, Branch 9, Tacloban City are SET ASIDE. Criminal Case No. 2011-04-268 for MURDER against Ret. P/C Supt. Edwin A. Pfleider is REINSTATED.

SO ORDERED.

Petitioner filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, on which the OSG filed its Comment.

Meanwhile, on January 21, 2013, Asst. State Prosecutor Gingoyon filed with Branch 8 RTC of Tacloban City an Amended Information against Bautista. The Information now reads as follows:

AMENDED INFORMATION

The undersigned Assistant State Prosecutor acting as the City Prosecutor of Tacloban City per DOJ D.O. No. 472 dated June 10, 2011, accuses RYAN BAUTISTA y OSTOLANO of the crime of MURDER, committed as follows:

That on or about the 15[th] day of September, 2010 or prior thereto, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and who was offered a price, reward or consideration by another person whose true name, identity and whereabouts are still unknown and mutually helping one another, with intent to kill and with the qualifying circumstance of treachery, evident premeditation and with the use of an unlicensed firearm intended for that purpose, did then and there willfully, unlawfully and feloniously attack, assault and fire upon the herein victim Manuel "Boyen" Granados with the said unlicensed firearm (handgun) hitting him on the different parts of his body, causing him to sustain several gunshot wounds thereon which resulted to this untimely death, to the damage and prejudice of his heirs. (underscoring supplied)

On January 25, 2013, Bautista was arraigned on the newly amended Information, assisted by his counsel Atty. Gaspay. He was read the Information in the vernacular he knows, speaks and understands, to which he pleaded "NOT GUILTY."

The CA issued a Resolution dated June 26, 2013 denying petitioner Pfleider's Motion for Reconsideration and Supplemental Motion for Reconsideration. Hence, the filing of the instant Petition for Review on Certiorari under Rule 45 of the Rules of Court with this Court.

Grounds for the Petition

Petitioner raises the following grounds to support his petition, to wit:

I.

THE [CA] GRAVELY ERRED IN GIVING DUE COURSE AND NOT DISMISSING THE PETITION FOR CERTIORARI FILED BY THE [OSG] AS THE SAME IS NOT THE PROPER REMEDY, AND CANNOT BE AVAILED OF AS A SUBSTITUTE FOR THE LOST REMEDY OF AN APPEAL;

II.

ASSUMING THAT PETITION FOR CERTIORARI CAN BE AVAILED IN LIEU OF A LOST APPEAL, THE [CA] GRAVELY ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON OF BRANCH 9, REGIONAL TRIAL COURT, TACLOBAN CITY, COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE DISMISSED CRIMINAL CASE FOR MURDER WITH NO. 2011-04-268 AGAINST HEREIN PETITIONER FOR LACK OF PROBABLE CAUSE;

III.

THE [CA] ERRED IN HOLDING THAT HONORABLE JUDGE ROGELIO SESCON ARROGATED UPON HIMSELF THE EXECUTIVE FUNCTION OF DETERMINING PROBABLE CAUSE, AND ALLEGEDLY ASSUMED THE POWER TO PROSECUTE VESTED IN THE EXECUTIVE DEPARTMENT; AND

IV.

THE [CA] LIKEWISE ERRED IN HOLDING THAT PROBABLE CAUSE EXISTS, AND THAT PROSECUTION WAS ALLEGEDLY ABLE TO PROFFER SUFFICIENT BASIS TO ESTABLISH, MORE LIKELY THAN NOT, A LINK BETWEEN PETITIONER AND RYAN BAUTISTA WITH RESPECT TO THE KILLING OF MANUEL GRANADOS.[3]

In answer to the petition, the OSG filed its Comment dated April 2, 2014 to which petitioner Pfleider filed his Reply on May 14, 2014.

Discussion

I vote to grant the petition.

Petition for Certiorari under Rule 65 is not a remedy or substitute for a lost appeal

The instant petition is similar to *Santos v. Orda*[4] wherein the RTC dismissed the case for murder on the ground that no probable cause existed to indict the accused. In that case, the prosecution filed a motion for reconsideration, which was denied. Aggrieved by the Decision of the RTC, the OSG filed a Petition for Certiorari under Rule 65 with the CA claiming that the RTC committed grave abuse of discretion in finding that no probable cause existed against the accused. The CA thereafter granted said petition. However, this Court reversed and set aside the decision of the CA holding that:

... the petition for certiorari filed by respondent under Rule 65 of the Rules of Court is inappropriate. It bears stressing that the Order of the RTC, granting the motion of the prosecution to withdraw the Information and ordering the case dismissed, is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done by the court. Thus, the proper remedy is appeal.[5] (emphasis supplied)

Similar to *Orda*, the instant case was dismissed by the RTC for lack of probable cause. The motion for reconsideration of the prosecution was likewise dismissed by the RTC. And just like in *Orda*, the Solicitor General filed a Petition for Certiorari under Rule 65 of the Rules of Court with the CA instead of filing an appeal via Rule 122 of the Revised Rules of Court within 15 days[6] from receipt of the Order dismissing the motion for reconsideration.

The Order denying the prosecution's motion for reconsideration was received by the prosecution on October 26, 2011. Pursuant to Section 6 of Rule 122 and the "fresh period rule,"[7] the prosecution had until November 10, 2011 to perfect their appeal. However, instead of filing the appeal, the prosecution opted to file the Petition for Certiorari with the CA on December 23, 2011, or 57 days after the receipt of the Order.

From the foregoing, the prosecution lost its right to appeal and cannot remedy the lost appeal by filing a petition for certiorari alleging grave abuse of discretion against Judge Rogelio C. Sescon. Remarkably, the prosecution misrepresented in its petition for certiorari that "there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law." [8] The prosecution, despite feigning innocence or ignorance, obviously knew that it had the opportunity to use the remedy of appeal under Section 6, Rule 122, yet it failed to use it. An appeal is, in fact, the speediest and most adequate remedy the prosecution should have availed of. However, the prosecution let the 15-day period lapse and opted to use the 60-day period for filing a petition for certiorari, which is hardly the speedy remedy that the prosecution complained of. Consequently, with the expiration of the 15 days provided by the Rules of Court for it to file an appeal, the Resolution of the RTC finding no probable cause against Pfeider became final and terminated the proceedings therein. The prosecution is now precluded from using the extraordinary remedy of certiorari under Rule 65.

The CA cannot invoke the liberalization of the Rules merely based on an allegation of serving the "broader interest of justice" in order to rule on the merits instead of dismissing the petition outright. By allowing the wrong mode of appeal to remedy a lost appeal, the CA is guilty of denying justice to Pfeider. The pronouncement that no probable cause existed cannot be deemed as a grave abuse of discretion since Judge Sescon fully studied and evaluated all the relevant evidence submitted to his sala.

The DOJ, in its Resolution dated May 4, 2012, even agreed to the findings of Judge Sescon that no probable cause existed and that the petition for review was moot and academic. The DOJ held:

x x x In said case, Judge Rogelio C. Sescon issued a Resolution dated September 5, 2011, which found no

probable cause against respondent P/CSupt. Edwin Pfleider (Ret.).

The Court's Resolution, to which we agree, renders the petition for review moot and academic. As held by the Supreme Court in *Sps. Freddie & Elizabeth Webb, et al. vs. Secretary of Justice, et al.*, G.R. No. 139120, July 31, 2003, "once a complaint or information is filed in court, however, as in the present case, any disposition of the case- be it dismissal of the case, or conviction or acquittal of the accused- rests on the sound discretion of the court. For although the prosecutor of criminal cases even while the case is already in court, he cannot impose his opinion on the trial court which is the final arbiter on whether or not to proceed with the case." (emphasis supplied)

In reversing the RTC and at the same time basing such reversal on a superficial review of the evidence, the CA committed grave abuse of discretion in failing to deny the petition for certiorari.

The Court has authority to resolve the issues
and a remand of the case to the trial Court is
not warranted because the record is sufficient
to render judgment

While this Court, as a general rule, is not a trier of facts, the instant case clearly falls within the exceptions to the general rule.

In the seminal case of *The Insular Assurance Company, Ltd v. Court of Appeals*,^[9] this Court had the occasion to expound on the instances that are deemed as exceptions to the generally accepted rule that this Court cannot evaluate issues of facts, namely:

x x x x (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.^[10] (emphasis supplied)

It is quite evident that the instant petition falls under the above-stated exceptions because the findings of the RTC and the CA are manifestly contradictory. The RTC dismissed the case while the CA found probable cause and ordered the reinstatement of the criminal Information against petitioner Pfleider.

Moreover, the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Looking at the Decision of the CA dated October 23, 2012, the CA obviously failed to examine exhaustively the affidavits of the witnesses, which, if properly examined, would show glaring inconsistencies. In reversing a trial court's decision based on the facts and evidence submitted to the court, the appellate court should review and explain substantially the reason for its reversal by showing the errors the trial court made in rendering its decision. In the herein CA Decision, the pieces of evidence examined were superficially explained and merely enumerated. The CA stated the following:

First, the testimony of Jimmy Atoy deposing that the get-away vehicle used by Ryan was the same vehicle bought by Pfleider from their store and it was Pfleider's instruction that the receipt and invoice be named after Ryan. Second, PO3 Sacris attested that Pfleider sent him to a gunsmith to get a gun which was later identified

as the same gun used to kill the victim Manuel. Third, Rex Gillamac averred that Ryan told him about Pfeider's order to kill Manuel for P50,000.00[11] x x x

Had the CA carefully considered the evidence on record, it would have arrived at a different conclusion. Studying the evidentiary basis that the CA relied upon, it should have seen that: first, Atoy, the mechanic/janitor of Maning's Enterprises, claimed that he allegedly received P30,000 from petitioner Pfeider and gave the same to the cashier, Catherine. Thereafter, he stated that petitioner Pfeider allegedly ordered Catherine to place Bautista's name on the receipt. Yet, the prosecution failed to secure the testimony of the cashier, who personally handled the transaction. Obviously, between Atoy and Catherine, the latter's testimony is more credible since she was the one who allegedly personally interacted with petitioner Pfeider. Common sense of a prudent man would of course view the testimony of the mechanic as mere hearsay since the mechanic did not personally interact with a customer and conduct the sale. It is highly doubtful that a customer will hand money to a mechanic instead of paying directly to the cashier. Second, PO3 Sacris attested that petitioner Pfeider sent him to a gunsmith, Mendoza, to get the gun used to kill Granados. Again, the prosecution failed to get the testimony of Mendoza to further corroborate the accusation of PO3 Sacris. Ironically, the gunsmith Mendoza, in his Affidavit, denied that PO3 Sacris got the gun from him. The denial of Mendoza disproved the accusation of PO3 Sacris that the gun was obtained from him. Third, Gillamac's testimony deserves scant notice since his and Bautista's Affidavits are full of contradictions.

Since the CA heavily relied on the affidavit of both Bautista and Gillamac to reverse the findings of the RTC, a comprehensive review should have been done. Studying the affidavits filed by both Bautista and Gillamac would show that both failed to corroborate the other. Also, Bautista belatedly sought to correct the blatant errors in his First Affidavit by submitting a supplemental/corrective affidavit, already his Third Affidavit, in an attempt to make it appear that his affidavits corroborate Gillamac's affidavit.

Worse, the CA did not even test the admissibility of the prosecution's evidence. For instance, the CA still put probative weight on the Affidavit of PO3 Sacris despite its clear inadmissibility due to the untimely death of PO3 Sacris. The CA likewise failed to screen the testimony of Gillamac as being hearsay, and thus inadmissible.

A superficial analysis of the aforementioned affidavits would not serve justice. Clearly, this petition falls also under the exception "(1) when the findings are grounded entirely on speculation, surmises or conjectures. "

Evidently, this Court can fully appreciate and decide the case based on the evidence submitted because of the aforementioned exceptions. Accordingly, a remand to the RTC is unnecessary because this will entail additional expenses to both parties, as well as the judicial courts. Likewise, justice will not be served due to the delay a remand necessarily entails.

More importantly, remanding this case back to the RTC will result in a scenario where exactly the same pieces of evidence will be reevaluated at the trial court level. In doing so, a dangerous precedent resulting in the destabilization of our justice system may be triggered where the trial court evaluates issues of facts again and again, ad infinitum, to the detriment of the parties.

Also, there is no indication that the prosecution was denied their day in court. In fact, the contrary occurred because the prosecution was allowed to submit pieces of evidence on multiple occasions. This led to the RTC's observation stating that the prosecution submitted its evidence piecemeal resorting to multiple clarificatory or supplemental affidavits after realizing that the evidence it had previously submitted was vague, inadequate or conflicting. The submission of multiple clarificatory affidavits served only to weaken the allegations of the prosecution since doubt as to the credibility of the witnesses arose due to the inconsistent facts submitted by them.

For instance, the prosecution submitted the First Affidavit of Bautista at the time the Information was filed with

the RTC. Around four months thereafter, and sensing that the petitioner had exploited the vagueness and inconsistencies of Bautista's First Affidavit when juxtaposed with Gillamac's Affidavit, the prosecution submitted Bautista's Third Affidavit in an effort to explain the perceived contradictions.

The prosecution never complained that it was prevented from presenting any evidence that it wished to be considered by the RTC, and, therefore, cannot impute grave abuse of discretion on the part of RTC Judge Sescon for any whimsical, capricious or malicious action, since there is none.

Hence, the record of this case unquestionably contains all evidence submitted by both parties, and there are no more pieces of evidence that any party may further wish to adduce. Remanding the case back to the RTC, which already conducted a full and detailed evaluation of all the evidence, may lead to multiple, unending, or even conflicting determinations of fact.

It is also an established rule for this Court not to remand cases where it is in a position to resolve the dispute based on the records before it.^[12] There are several reasons that rationalize this doctrine. In *Golangco v. Court of Appeals*,^[13] this Court explained that remanding the case was not proper since, in all probability, it will only cause further delay as the decision would again be appealed to this Court. For the expeditious administration of justice, this Court in *Golangco* deemed it proper to resolve the issues presented before it.

In *Board of Commissioners (CID) v. De la Rosa*,^[14] it was held that it is a rule for this Court to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. This Court explained that no useful purpose will be served if a case or the determination of an issue in a case is remanded to the trial court only to have its decision raised again to the CA, and from there back again to this Court.

In *Nicolas v. Desierto*,^[15] it was similarly held that remand was not necessary because the Court was in a position to resolve the issue based on the records and evidence before it. More importantly, the Court held that the ends of speedy justice would not be served by such remand.

In *People v. Escobar*,^[16] this Court deemed it wise to render judgment, rather than to remand the case in order to accord the accused therein their Constitutional right for the speedy disposition of their cases.

Certainly, we can add to the aforementioned explanations and further enrich our jurisprudential principles by affirming that remanding a case is not warranted when doing so can result in multiple, unending, or contradicting determinations of factual issues.

Based on the foregoing, there is no just explanation to remand the instant petition back to the RTC.

The evidence on record submitted by the prosecution clearly failed to support a finding that probable cause exists

It is the considered view that the Court must uphold the detailed analysis made by Judge Sescon that the evidence on record is clearly insufficient to support a finding that probable cause exists.

The prosecution was fully aware and even admitted that it could not successfully establish probable cause solely based on the extrajudicial confessions of Bautista. Thus, the prosecution saw the need to present additional evidence and submitted the affidavits of three other witnesses, namely: (1) Affidavit of PO3 Sacris; (2) Affidavit of Gillamac; and (3) Affidavit of Atoy.

First, the prosecution presented the Affidavit of PO3 Sacris who alleged that he was sent by no less than petitioner himself to claim a gun from a certain Renato Mendoza. To prevent the possibility that the gun may be

inadvertently interchanged with another firearm, PO3 Sacris asserted that he copied the serial number of the gun on his PNP tickler. This gun turned out to be the same firearm that was recovered from the gunman Bautista that was used in the shooting of Granados.

Unfortunately, while this case was pending, PO3 Sacris died in an accident while he was riding on his motorcycle. Tragically and ironically, the vehicle that hit PO3 Sacris causing his untimely demise was owned by the family of the victim Granados.[17] There is no indication that petitioner had been involved in any manner with regard to the death of PO3 Sacris.

In view of Sacris' untimely demise, this Court can no longer take into account PO3 Sacris' statements in determining the existence of probable cause, for doing so would violate the Constitutional rights of the petitioner to meet the witness against him face to face.[18] The statements of PO3 Sacris can no longer have any probative value.[19] It was, therefore, a grave error on the part of the CA when it continued to consider the allegations of PO3 Sacris.

Second, the prosecution submitted the Affidavit of Gillamac who claimed that the son of petitioner hired him as a bodyguard-driver during the May 2010 elections. While serving as a bodyguard-driver, Gillamac averred that he was the one who introduced Bautista to petitioner in relation to an alleged assassination plot against a certain Mayor Po. Accordingly, Gillamac said that he got to know that Bautista had a project to assassinate Granados when he accompanied Bautista to conduct a surveillance operation. Based on Gillamac's statements, Bautista confided to him the identity of the mastermind in the assassination of Granados:

Q: During your surveillance, was there anything that Ryan confided to you?

A: Ryan said his niece is sick and needs to be brought to the hospital as soon as possible so he needed money for her medication and that project is an opportunity for him to have money.

Q: Did he tell you who induced him to do the project and how much?

A: Yes, he said the project is worth Php50,000.00 and his principal is alias "Bebot Heneral".[20]

The foregoing is a classic and perfect example of what constitutes hearsay evidence. In *People v. Manhuyod, Jr.*, hearsay evidence is defined as "evidence not of what the witness knows himself but of what he has heard from others." [21] Likewise, Section 36, Rule 130 of the Rules of Court provides that a witness can testify only to those facts which he knows of his own personal knowledge. Hence, the hearsay rule bars the testimony of a witness who merely recites what someone else has told him. The rule that hearsay testimony is inadmissible in evidence is fundamental.[22]

It is indubitable that Gillamac, based on the records, had no personal knowledge as regards the identity of the principal, if any, of the assassination operation of Bautista. Gillamac's sole basis in claiming that petitioner is involved in the crime is merely the story Bautista told him. Since Gillamac has no personal knowledge of any information that it was petitioner who induced or ordered Bautista to kill the victim Granados, Gillamac's statements are purely hearsay and inadmissible in evidence to prove the complicity of petitioner.

In *Agcaoili v. Aquino*, [23] a case involving parties that were members of the bench, this Court made a categorical ruling that hearsay evidence cannot be the basis of probable cause for the issuance of a warrant of arrest. A witness can testify only to those facts which he knows of his personal knowledge, that is, which are derived from his own perception. Hearsay evidence, therefore, has no probative value whatsoever.

Interestingly, Bautista, in his First Affidavit, never even mentioned Gillamac's name as the person who went with him for the surveillance of the victim.

Third, the prosecution submitted the Affidavit of Atoy who averred that it was petitioner Pfleider who personally

bought the motorcycle that Bautista used and was recovered from the crime scene. Atoy claimed that he was employed as a junkshop helper and mechanic at Maning's Enterprises. Atoy further claimed that he was the one who personally received the payment for the getaway motorcycle vehicle from petitioner Pfleider. According to Atoy, he came to personally know petitioner Pfleider after the latter allegedly bought two motorcycles on a previous occasion, and in that event a co-worker had told him that the buyer was petitioner Pfleider:

Q: How did you know General Pfleider? Are you acquainted with him?

A: Yes sir, I know General Pfleider because he had already bought from us two (2) other motorcycles he used during the May 2010 election before he purchased the said STX motorcycle he gave to Ryan Bautista. Besides, I know him (Pfleider) to be the owner / proprietor of the Duptours van for hire.

Q: How long do you know General Pfleider?

A: I have known him since he bought at our store the two (2) units of motorcycles before the May 2010 National and Local Elections.

Q: Did he actually go to your office to personally buy that two (2) units of motorcycle that he used in the elections?

A: Yes sir, he was the one who went to our store that is why I knew him

Q: Who told you the name and identity of General Pfleider?

A: Our former mechanic, Jovie Laude of Ormoc City who knows him.

Petitioner Pfleider, in his Counter-Affidavit, denied that he bought the motorcycle that was used as getaway vehicle by Bautista, or that he bought any motorcycle from Maning's Enterprises for that matter. Petitioner Pfleider also raised in his defense that he was not the buyer of the getaway motorcycle as proven by Sales Invoice No. 4401 indicating the name of Bautista as buyer.

Petitioner Pfleider further submitted an Affidavit executed by his son, Edwin "B." Pfleider. The latter admitted in his affidavit that it was he who personally bought a motorcycle from Maning's Enterprises, and not his father whose full name is Edwin "A." Pfleider. To corroborate his assertions, petitioner submitted a Sales Invoice dated November 17, 2009 and a Deed of Absolute Sale notarized on November 18, 2009, both of which indicate that the name of the person who bought a motorcycle from Maning's Enterprises is the son Edwin "B." Pfleider, and not petitioner Edwin "A." Pfleider.

Simply stated, the prosecution wishes to convince this Court that even if Sales Invoice 4401 reflects the name of Bautista, such does not negate a finding that petitioner Pfleider was the true purchaser.

On a more crucial point, however, it must not escape the keen observation of this Court that the prosecution never addressed the contention of petitioner Pfleider that it was another person who was involved in the previous motorcycle sale. This point is so crucial because Atoy claimed that it was during this very occasion that he became aware of the identity of petitioner Pfleider.

The documentary evidence on record, in the form of Sales Invoice and notarized Deed of Sale, all points to the conclusion that it was not petitioner Pfleider, but his son whose name is Edwin "B." Pfleider, who previously bought a motorcycle from Maning's Enterprises. These documents came into existence long before the crime occurred and could not have been hatched merely to suit the self-serving interests of petitioner Pfleider. On their part, the prosecution was not able to submit any Sales Invoice, Deed of Sale, or other documentary evidence showing that petitioner made any purchases from Maning's Enterprises. The sale of a motorcycle unit is a regulated transaction and is bound to yield a document trail. The absence of any documentary evidence establishing that petitioner purchased from Maning's Enterprises can only mean that no such transaction ever took place. In fact, the prosecution never contradicted Pfleider's allegation that it was another person who was involved

in the previous sales transaction referred to by Atoy.

This means that Atoy was either seriously mistaken or was not being truthful when he claimed that he came to personally know the identity of petitioner Pfleider when the latter purportedly transacted at Maning's Enterprises on a previous occasion. Atoy's statement clearly cannot support a finding of probable cause because, aside from being left uncorroborated, it points to the conclusion that he never met the petitioner. It remains uncontroverted that it was not petitioner Pfleider, but another person in the name of Edwin "B." Pfleider, who made the previous motorcycle purchase.

Probable cause, for purposes of issuance of warrant of arrest, has been defined as such facts and circumstances which would lead a reasonable, discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. It is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for arresting the accused.[24] The requirement that a warrant of arrest can issue only upon the existence of probable cause is a protection against false arrest enshrined in no less than Section 2, Article III of the Constitution.

Tested against the aforementioned standard, it is clear that the pieces of evidence submitted by the prosecution, all circumstantial in nature, cannot support a finding that judicial probable cause exists. The statements of PO3 Sacris and Gillamac are indubitably not admissible in evidence and produce no legal effect. The testimony of Atoy is left uncorroborated and suffers from serious flaws.

The prosecution also advanced the theory that the First and Third Affidavits of Bautista can be admitted, although not as direct evidence, but as corroborating evidence to show the probability of participation of a co-accused.

The proposition of the prosecution that an extrajudicial confession may be admissible as corroborative evidence of other facts is unavailing. This Court held in *People v. Vda. de Ramos*[25] that the application of the rule that an extrajudicial confession may be accepted as corroborative evidence necessarily implies that there must be other direct or circumstantial evidence. In the absence of any other evidence, then there will be nothing for the extrajudicial confession to corroborate.

In the instant case, Bautista's extrajudicial confessions cannot serve to corroborate the allegations of PO3 Sacris and Gillamac. It bears reiterating that PO3 Sacris already died and his death makes it impossible for the petitioner to confront him. On the other hand, Gillamac's allegation regarding the involvement of petitioner is hearsay in nature. Bautista's First Affidavit also cannot serve to corroborate Atoy's statements simply because it never made any reference to Atoy.

Bautista's allegations in his Third Affidavit are too speculative and the manner in which his affidavits were executed was replete with serious irregularities. First, Bautista's Third Affidavit, which constitutes a confession, was executed without the assistance of counsel in violation of the Constitutional guarantee against uncounselled confessions. Second, Bautista was not informed of his right to have a competent and independent counsel of his own choice in executing his Third Affidavit. Third, Bautista's Third Affidavit was executed in English, a language that Bautista does not understand. Fourth, Bautista entered a plea of not guilty during his arraignment. As a legal consequence, the prosecution is now required to independently prove all elements of the crime charged and the prosecution can no longer rely on Bautista's extrajudicial confessions. Fifth, Bautista executed three different affidavits, a fact that adversely affects his credibility and the voluntariness of his confessions.

Then, the extrajudicial statements of Bautista consist of incredulous accounts. According to Bautista, a certain "Bebe" and "Kokie" invited him to go with them. Bautista agreed to go despite barely knowing "Bebe" and "Kokie," and despite not knowing where the group planned to go. Strangely, the group allegedly ended up

meeting with petitioner, where Bautista was introduced as a barber. Months later, petitioner purportedly contacted Bautista and all of a sudden gave the assassination instruction. The narration is highly improbable, contrary to human experience, or even ridiculous.

Also, Bautista claimed that it was Pfeider himself who accompanied him during a surveillance to identify the target victim. This statement of Bautista contradicts Gillamac's version wherein Gillamac claimed that he was the one who accompanied Bautista during the latter's surveillance of the victim. Bautista likewise claimed that it was "Kokie" who introduced him to Pfeider. This is clearly contrary to the allegations of Gillamac claiming that he was the one who introduced Bautista to Pfeider. Notably, nowhere in Bautista's First Affidavit did he even mention Gillamac's name.

Notably, Bautista attempted to salvage the foregoing inconsistencies in his Third Affidavit when he explained that more than one surveillance operation was made. Pfeider allegedly accompanied Bautista in one surveillance operation, while it was Gillamac who went with Bautista in another surveillance. Bautista also claimed that "Bebe" and Gillamac is actually one and the same person.

The subsequent addition of completely new stories in Bautista's Third Affidavit seriously undermines his spontaneity and truthfulness with respect to the new allegations. It is more than likely that the new stories in Bautista's Third Affidavit were merely fabricated to "fix" fatal drawbacks the prosecution's theory had suffered after the contradictions were exploited. These drawbacks, coupled with the fact that the execution of Bautista's Third Affidavit transgressed multiple Constitutional safeguards, lead to a conclusion that the prosecution's evidence clearly fails to satisfy the required probable cause threshold.

Finally and importantly, we should note that on January 21, 2013, Asst. State Prosecutor Gingoyon filed with Branch 8 of the RTC, Tacloban City, an Amended Information against Bautista which incorporated an accusatory portion that alleges the presence of conspiracy in the murder of Granados. Most interestingly, when Bautista was arraigned on January 25, 2013 pursuant to the newly Amended Information and assisted by his counsel, Atty. Gaspay, Bautista pleaded "Not Guilty." This filing of an Amended Information against Bautista seems to be a desperate attempt to tag petitioner Pfeider as the mastermind behind the murder of Granados. In reviewing the records of this case, the Amended Information took more than two (2) years for the prosecution to amend Bautista's Information solely causing the murder of Granados to conspiring with other persons to commit the crime. Most remarkably, the Amended Information intentionally left Pfeider's name unmentioned, again We quote: "another person whose true name, identity and whereabouts are still unknown."

This Amended Information is a patent violation of Section 2, Rule 110 of the Rules on Criminal Procedure which states: "The complaint or information shall be in writing, in the name of the People of the Philippines against all persons who appear to be responsible for the offense involved." Likewise, Section 6 of the same rule also provides that: "When an offense is committed by more than one person, all of them shall be included in the complaint or information."

Thus, despite the prosecution's tenacious advocacy of implicating Pfeider as the mastermind of the crime, it is quite obvious that the prosecution was never sure about Bautista's alleged co-conspirator. This dislocates their charge against Pfeider of ordering the murder of Granados.

Finally, Bautista's plea of "NOT GUILTY" to the charge found in the Amended Information shows that he was fully aware that the State was charging him for conspiring with another person in the murder of Manuel. By denying his guilt to the charge in the Amended Information, he effectively withdrew and denounced the extrajudicial confession in his First Affidavit wherein he confessed to committing the crime against Granados. This most recent plea of Bautista only underlines the unreliability and unworthiness of his allegations in the eyes

of the law and effectively diminishes his credibility as a witness.

Therefore, the evidence on record submitted by the prosecution clearly failed to support a finding that probable cause exists to charge petitioner for murder.

Accordingly, I vote to GRANT the instant petition.

[1] Annex "K" of the Petition for Review on Certiorari.

[2] Penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy.

[3] Rollo, pp. 15-16.

[4] G.R. No. 189402, May 6, 2010, 620 SCRA 375.

[5] Id. at 383.

[6] Section 6. When appeal to be taken. An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from.

[7] Neypes v. Court of Appeals, G.R.No. 241524, April 14, 2005, 469 SCRA 633, 641.

[8] Rollo, p. 715.

[9] G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[10] Id. at 86.

[11] Rollo, p. 124.

[12] Baylon v. Fact-Finding Intelligence Bureau, G.R. No. 150870, December 11, 2002, 394 SCRA 21.

[13] G.R. No. 124724, December 22, 1997, 283 SCRA 493, 501.

[14] G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 853, 875-876.

[15] G.R. No. 154668, December 16, 2004, 447 SCRA 154, 164.

[16] G.R. Nos. L-69564 & L-69658, January 29, 1988, 157 SCRA 541.

[17] Annex "X" of the Petition for Review on Certiorari.

[18] 1987 CONSTITUTION, Art. III, Sec. 14.

[19] Tating v. Marcella, G.R. No. 155208, March 27, 2007, 519 SCRA 79.

[20] Page 2, Affidavit of Rex Maceda Gillamac dated September 16, 2010.

[21] G.R. No. 124676, May 20, 1998, 290 SCRA 257, 270.

[22] People v. Vda. de Ramos, 451 Phil. 214, 224 (2003).

[23] A.M. No. MTJ-94-979, October 25, 1995, 263 SCRA 403.

[24] Allado v. Diokno, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 199-200.

[25] Supra note 22, at 225.

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