

JOSEPH SCOTT PEMBERTON, PETITIONER, VS. HON. LEILA M. DE LIMA, IN HER CAPACITY AS THE SECRETARY OF JUSTICE, JUDGE ROLINE GINEZ- JABALDE, IN HER CAPACITY AS PRESIDING JUDGE OF BR...

G.R. No. 217508. April 18, 2016

Ponente: LEONEN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-217508/>

LEONEN, J.:

This resolves a Petition for Certiorari[1] praying that the Resolutions dated January 27, 2015[2] and February 20, 2015[3] of respondent Secretary of Justice Leila M. De Lima (Secretary De Lima) in I.S. No. III-10-INV-14J-01102[4] be reversed and set aside.[5]

A complaint for murder was filed by the Philippine National Police-Olongapo City Police Office and private respondent Marilou Laude y Serdoncillo (Laude) against petitioner Joseph Scott Pemberton (Pemberton).[6]

On October 17, 2014, Pemberton received a Subpoena[7] issued by the City Prosecutor of Olongapo City giving him 10 days from receipt within which to file a counter-affidavit.[8] Laude filed an Omnibus Motion[9] dated October 21, 2014 praying that the City Prosecutor of Olongapo City issue subpoenas addressed to: (a) "Pemberton, directing him to present himself for the lifting of his fingerprint and of buccal swabs during the clarificatory hearing set on [November 5,] 2014;"[10] and (b) the Philippine National Police Crime Laboratory, directing the Chief of Office to assign forensic personnel to gather fingerprints and buccal swabs from Pemberton and subject him to "forensic examination and analysis, including DNA testing." [11] Pemberton opposed this in his Opposition to the Omnibus Motion dated 21 October 2014[12] dated October 27, 2014.[13] He also filed a Manifestation and Omnibus Motion: (1) For Clarification; (2) To Declare Absence of Probable Cause for Murder or Any Other Crime Against [Petitioner]; and (3) By Way of Ad Cautela [sic] Prayer, in the Event that this Honorable Office does not Declare the Absence of Probable Cause, at the very least, To Reduce the Charge to Homicide Considering the Lack of Circumstances Qualifying the Offense to Murder[14] dated October 27, 2014.[15]

During the preliminary investigation on October 27, 2014, the City Prosecutor of Olongapo City stated that Pemberton's right to file a counter-affidavit was deemed waived.[16] In the Order dated October 29, 2014, the City Prosecutor directed the Philippine National Police Crime Laboratory to obtain latent fingerprint and buccal swabs from Pemberton and "to submit . . . the results of the forensic examination within a period of three (3) weeks . . . from the date of actual collection of the specimen[s.]"[17]

Pemberton filed a Manifestation with Omnibus Motion: 1) to Determine Probable Cause on the Basis of Evidence Submitted as of 27 October 2014; and 2) For Reconsideration of the Order dated 29 October 2014[18] dated November 4, 2014.[19]

However, the City Prosecutor of Olongapo City continued to evaluate the evidence and conducted ocular

inspections in connection with the preliminary investigation.[20] Through the Resolution dated December 15, 2014, it "found probable cause against [Pemberton] for the crime of murder." [21] On the same day, an Information[22] for murder was filed against Pemberton before the Regional Trial Court of Olongapo City.[23] The case was docketed as Criminal Case No. 865-2014 and was raffled to Branch 74 of the Regional Trial Court.[24] The trial court issued a warrant of arrest.[25]

On December 18, 2014, Pemberton filed his Petition for Review before the Department of Justice.[26] On the same day, he filed a Motion to Defer the Proceedings[27] before the Regional Trial Court.[28]

In the Resolution dated January 27, 2015, Secretary De Lima denied Pemberton's Petition for Review[29] and stated that based on the evidence on record, there was "no reason to alter, modify, or reverse the resolution of the City Prosecutor of Olongapo City." [30] Pemberton's Motion for Reconsideration was likewise denied for lack of merit in the Resolution dated February 20, 2015.[31]

Aggrieved, Pemberton filed this Petition for Certiorari with application for the ex-parte issuance of a temporary restraining order and/or writ of preliminary injunction.[32]

Pemberton argues that in sustaining a finding of probable cause, Secretary De Lima committed grave abuse of discretion amounting to excess or absence of jurisdiction based on the following grounds: (a) Secretary De Lima took into account additional evidence which the City Prosecutor allegedly had no authority to receive and which Pemberton had no opportunity to address and rebut, thereby denying him due process of law;[33] (b) Secretary De Lima found probable cause to charge Pemberton with the crime of murder when "the evidence on record does not support the existence of probable cause to indict [him] . . . with either homicide or murder[;]"[34] and (c) Secretary De Lima found that "the killing was attended with the qualifying circumstances of treachery, abuse of superior strength[,] and cruelty despite prevailing jurisprudence dictating that the elements of these qualifying circumstances . . . be established by direct evidence." [35]

Secretary De Lima, through the Office of the Solicitor General, points out that this Petition is procedurally infirm. The Petition assails the appreciation of evidence and law by Secretary De Lima, which are "errors of judgment . . . [that] cannot be remedied by a writ of certiorari." [36] Further, by filing this Petition before this court and not the Court of Appeals, Pemberton violated the principle of hierarchy of courts.[37] Moreover, the case is moot and academic, considering that the Regional Trial Court has convicted Pemberton for the crime charged.[38]

Thus, for resolution are the following issues:

First, whether respondent Secretary Leila M. De Lima committed grave abuse of discretion in sustaining the finding of probable cause against petitioner Joseph Scott Pemberton, thereby denying petitioner due process of law;

Second, whether petitioner violated the principle of hierarchy of courts by filing his Petition before this Court instead of the Court of Appeals; and

Lastly, whether this case has been rendered moot and academic.

We deny the Petition for Certiorari for lack of merit and for being moot and academic.

I

In *Alafriz v. Nable*, [39] this Court defined grave abuse of discretion:

Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. "Without jurisdiction" means that the court acted with absolute want of jurisdiction. There is "excess of

jurisdiction" where the court has jurisdiction but has transcended the same or acted without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[40] (Citations omitted)

In *Ching v. Secretary of Justice*,[41] this Court expounded on the evidence required for a determination of probable cause:

Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon probable cause of reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed by the suspect.[42]

This was reiterated in *Chan v. Secretary of Justice*:[43]

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[44]

There is no basis to doubt that respondent De Lima judiciously scrutinized the evidence on record. Based on respondent De Lima's assessment, there was ample evidence submitted to establish probable cause that petitioner murdered the victim:

First, the killing of Laude has been indubitably confirmed.

Second, the various pieces of evidence so far presented in this case, i.e., the CCTV footage of Ambyanz showing Gelviro, Laude and respondent leaving the club together; the unequivocal testimonies of Gelviro and Gallamos positively identifying respondent as the person who was last seen with Laude on the night he died; the result of the general physical examination conducted on respondent showing abrasions and light scratches on different parts of his body; his latent print on one of the condoms found at the crime scene; and the unequivocal testimonies of respondent's fellow Marine servicemen who were with him on that fateful night, lead to no other conclusion than that respondent was the perpetrator of the crime.

Third, the results of the physical examination conducted on respondent and Laude's cadaver, as well as the ocular inspection of the crime scene, demonstrate the attendant qualifying circumstances of treachery, abuse of superior strength, and cruelty.

Finally, the killing is neither parricide nor infanticide as provided under the RPC, as amended. Hence, the charge of murder.

The convergence of the foregoing circumstances all taken together leads to the fair and reasonable inference that respondent is probably guilty of killing Laude through treachery, abuse of superior strength, and cruelty.

Maintaining his innocence, respondent points out the lack of any direct evidence linking him to the crime. We are not persuaded.

Absence of direct evidence does not preclude a finding of probable cause. It has been the consistent pronouncement of the Supreme Court that, in such cases, the prosecution may resort to circumstantial evidence. Crimes are usually committed in secret and under conditions where concealment is highly probable.

If direct evidence is insisted upon under all circumstances, the guilt of vicious felons who committed heinous crimes in secret or in secluded places will be hard, if not impossible, to prove.

In view of the importance of the qualifying circumstances as the bases for respondent's indictment for the crime of murder, the same are heretofore discussed and explained.

There is treachery when these two elements occur: (1) the employment of means of execution that give the persons attacked no opportunity to defend themselves or retaliate; and (2) the means of execution were deliberately or consciously adopted.

Treachery clearly attended the killing of Laude. The evidence reveals that respondent choked him from behind. The autopsy results as well as the examination conducted by the NCIS indicate that there were visible pressure marks and a circular purplish discoloration around his neck. In addition, the Medico Legal Report No. A14-163RCLO5 shows that the external portion of the right horn of his larynx is contused and that there is hematoma on the upper inner portions of the larynx below the glottis. It is apparent that the manner of attack employed by respondent rendered Laude unable to defend himself or to retaliate.

It has been repeatedly held that the essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. We note that the short span of time it took to kill Laude indicates the suddenness of the attack. According to the separate testimonies of certain witnesses, the lifeless body of Laude was discovered thirty (30) minutes after Gelviro left the room.

Moreover, the absence of provocation on the part of Laude to warrant such vicious attack need not be debated. He went with respondent on his own volition to engage in sexual acts in exchange for money. Thus, he most probably did not expect to be in danger and, consequently, he was unlikely unable to defend himself against the unwarranted attack.

In appreciating the element of abuse of superior strength, it is not only necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is also necessary to analyse the incidents and episodes constituting the total development of the event. We aptly note that respondent is a member of [the] United States Marine Corps, which is known to have the strictest recruitment standards among the Uniformed Services of the United States Armed Forces. In view of the rigorous physical and mental training requirements for enlistment, all members of the Marine Corps possess superior strength and exceptional combat skills. On the other hand, Laude, albeit biologically a man, is a transgender who chose to adapt (sic) a woman's physical appearance and behavior. Thus, it is clear that there is manifest physical disparity between respondent and Laude and that the former took advantage of his superior strength to cause the death of Laude, as evidenced by the multiple abrasions and contusions found on the latter.

On the other hand, there is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act. The test is whether respondent deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse. The autopsy results that Laude died of "asphyxia due to drowning and strangulation" shows that while he was still breathing, respondent drowned him by forcefully submerging his head in the water inside the toilet bowl. This grisly scenario, coupled with Laude's other major injuries, clearly show that he suffered excessively prior to his death. Respondent opted to kill him in a manner that increased his suffering and caused him unnecessary physical pain before his death. Drowning Laude in a toilet bowl evidently indicates respondent's intention to degrade him.[45] (Citations omitted)

Respondent De Lima's finding of probable cause against petitioner was not rendered with grave abuse of discretion. Rather, her determination was based on a careful evaluation of evidence presented.

Moreover, petitioner was fully accorded due process in the preliminary investigation proceedings. This Court has explained that the essence of due process is an opportunity to be heard:

The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case; what the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.[46] (Citations omitted)

Petitioner had multiple opportunities to controvert the evidence presented during the preliminary investigation. He was directed to file a counter-affidavit, which was an opportunity to refute the allegations against him. Petitioner was also given the opportunity to seek reconsideration of the initial finding of probable cause.

II

In *The Diocese of Bacolod v. Commission on Elections*,^[47] we explained the role of this Court in relation to the doctrine of hierarchy of courts:

This brings us to the issue of whether petitioners violated the doctrine of hierarchy of courts in directly filing their petition before this court.

Respondents contend that petitioners' failure to file the proper suit with a lower court of concurrent jurisdiction is sufficient ground for the dismissal of their petition. They add that observation of the hierarchy of courts is compulsory, citing *Heirs of Bertuldo Hinog v. Melicor*. While respondents claim that while there are exceptions to the general rule on hierarchy of courts, none of these are present in this case

On the other hand, petitioners cite *Fortich v. Corona* on this court's discretionary power to take cognizance of a petition filed directly to it if warranted by "compelling reasons, or [by] the nature and importance of the issues raised" Petitioners submit that there are "exceptional and compelling reasons to justify a direct resort [with] this Court."

In *Bañez, Jr. v. Concepcion*, we explained the necessity of the application of the hierarchy of courts:

The Court must enjoin the observance of the policy on the hierarchy of courts, and now affirms that the policy is not to be ignored without serious consequences. The strictness of the policy is designed to shield the Court from having to deal with causes that are also well within the competence of the lower courts, and thus leave time to the Court to deal with the more fundamental and more essential tasks that the Constitution has assigned to it. The Court may act on petitions for the extraordinary writs of certiorari, prohibition and mandamus only when absolutely necessary or when serious and important reasons exist to justify an exception to the policy.

In *Bañez*, we also elaborated on the reasons why lower courts are allowed to issue writs of certiorari, prohibition, and mandamus, citing *Vergara v. Suelto*:

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefore. Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[48]

We proceeded to name exceptional cases, where direct resort to this Court may be allowed:

First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of certiorari and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.

In this case, the assailed issuances of respondents prejudice not only petitioners' right to freedom of expression in the present case, but also of others in future similar cases. The case before this court involves an active effort on the part of the electorate to reform the political landscape. This has become a rare occasion when private citizens actively engage the public in political discourse. To quote an eminent political theorist:

[T]he theory of freedom of expression involves more than a technique for arriving at better social judgments through democratic procedures. It comprehends a vision of society, a faith and a whole way of life. The theory grew out of an age that was awakened and invigorated by the idea of new society in which man's mind was free, his fate determined by his own powers of reason, and his prospects of creating a rational and enlightened civilization virtually unlimited. It is put forward as a prescription for attaining a creative, progressive, exciting and intellectually robust community. It contemplates a mode of life that, through encouraging toleration, skepticism, reason and initiative, will allow man to realize his full potentialities. It spurns the alternative of a society that is tyrannical, conformist, irrational and stagnant.

In a democracy, the citizen's right to freely participate in the exchange of ideas in furtherance of political decision-making is recognized. It deserves the highest protection the courts may provide, as public participation in nation-building is a fundamental principle in our Constitution. As such, their right to engage in free expression of ideas must be given immediate protection by this court.

A second exception is when the issues involved are of transcendental importance. In these cases, the imminence

and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.

In the case before this court, there is a clear threat to the paramount right of freedom of speech and freedom of expression which warrants invocation of relief from this court. The principles laid down in this decision will likely influence the discourse of freedom of speech in the future, especially in the context of elections. The right to suffrage not only includes the right to vote for one's chosen candidate, but also the right to vocalize that choice to the public in general, in the hope of influencing their votes. It may be said that in an election year, the right to vote necessarily includes the right to free speech and expression. The protection of these fundamental constitutional rights, therefore, allows for the immediate resort to this court.

Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan*, this court took cognizance of the case as a matter of first impression that may guide the lower courts:

In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.

This court finds that this is indeed a case of first impression involving as it does the issue of whether the right of suffrage includes the right of freedom of expression. This is a question which this court has yet to provide substantial answers to, through jurisprudence. Thus, direct resort to this court is allowed.

Fourth, the constitutional issues raised are better decided by this court. In *Drilon v. Lim*, this court held that:

. . . it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.

In this case, it is this court, with its constitutionally enshrined judicial power, that can rule with finality on whether COMELEC committed grave abuse of discretion or performed acts contrary to the Constitution through the assailed issuances.

Fifth, the time element presented in this case cannot be ignored. This case was filed during the 2013 election period. Although the elections have already been concluded, future cases may be filed that necessitate urgency in its resolution. Exigency in certain situations would qualify as an exception for direct resort to this court.

Sixth, the filed petition reviews the act of a constitutional organ. COMELEC is a constitutional body. In *Albano v. Arranz*, cited by petitioners, this court held that "[i]t is easy to realize the chaos that would ensue if the Court of First Instance of each and every province were [to] arrogate itself the power to disregard, suspend, or contradict any order of the Commission on Elections: that constitutional body would be speedily reduced to impotence."

In this case, if petitioners sought to annul the actions of COMELEC through pursuing remedies with the lower courts, any ruling on their part would not have been binding for other citizens whom respondents may place in the same situation. Besides, this court affords great respect to the Constitution and the powers and duties imposed upon COMELEC. Hence, a ruling by this court would be in the best interest of respondents, in order that their actions may be guided accordingly in the future.

Seventh, petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of

expression.

In this case, the repercussions of the assailed issuances on this basic right constitute an exceptionally compelling reason to justify the direct resort to this court. The lack of other sufficient remedies in the course of law alone is sufficient ground to allow direct resort to this court.

Eighth, the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." In the past, questions similar to these which this court ruled on immediately despite the doctrine of hierarchy of courts included citizens' right to bear arms, government contracts involving modernization of voters' registration lists, and the status and existence of a public office.

This case also poses a question of similar, if not greater import. Hence, a direct action to this court is permitted.

It is not, however, necessary that all of these exceptions must occur at the same time to justify a direct resort to this court. While generally, the hierarchy of courts is respected, the present case falls under the recognized exceptions and, as such, may be resolved by this court directly.[49]

A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons clearly and specifically set out in the petition.[50]

In this case, petitioner alleges that the case against him has been scheduled for an expedited trial.[51] Thus, petitioner claims that it is necessary "to expeditiously arrive at a definitive ruling as to whether . . . respondent [De Lima] committed grave abuse of discretion . . . in issuing the [a]ssailed [r]esolutions." [52] In his view, a direct invocation of this Court's original jurisdiction is necessary. Petitioner argues that without this Court's intervention, a situation may result where "the trial has already concluded[,] while the issue on whether there exists probable cause to charge [petitioner] with the crime of murder . . . has not been settled with finality." [53]

This argument is completely bereft of merit. It is not clear why any action by the Court of Appeals, which has concurrent original jurisdiction in petitions for certiorari under Rule 65, cannot be considered as sufficient for review of petitioner's case.

Furthermore, the possibility of the conclusion of the trial of the case against petitioner is not a reason that is special and important enough to successfully invoke this Court's original jurisdiction. Once there has been a judicial finding of probable cause, an executive determination of probable cause is irrelevant. Consequently, even assuming that grave abuse of discretion somehow taints an executive finding of probable cause, such grave abuse of discretion has no effect in a trial. Whether respondent De Lima, indeed, committed grave abuse of discretion in relation to the executive determination of probable cause is irrelevant to the trial itself.

III

A petition for certiorari questioning the validity of the preliminary investigation in any other venue is rendered moot by the issuance of a warrant of arrest and the conduct of arraignment. In *De Lima v. Reyes*: [54]

The filing of the information and the issuance by the trial court of the respondent's warrant of arrest has already rendered this Petition moot.

It is settled that executive determination of probable cause is different from the judicial determination of probable cause. In *People v. Castillo and Mejia*:

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public

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

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

The courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.

A preliminary investigation is "merely inquisitorial," and is only conducted to aid the prosecutor in preparing the information. It serves a two-fold purpose: first, to protect the innocent against wrongful prosecutions; and second, to spare the state from using its funds and resources in useless prosecutions

. . . .

Once the information is filed in court, the court acquires jurisdiction of the case and any motion to dismiss the case or to determine the accused's guilt or innocence rests within the sound discretion of the court. In *Crespo v. Mogul*:

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 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.

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibly be designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior

order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as we all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his [or her] opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he [or she] abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he [or she] may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he [or she] cannot impose his [or her] 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 who 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.

Thus, it would be ill-advised for the Secretary of Justice to proceed with resolving respondent's Petition for Review pending before her. It would be more prudent to refrain from entertaining the Petition considering that the trial court already issued a warrant of arrest against respondent. The issuance of the warrant signifies that the trial court has made an independent determination of the existence of probable cause

. . . .

Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.[55] (Emphasis in the original)

Respondent De Lima's manifestation regarding the conviction of petitioner of the crime of homicide[56] is well-taken. However, even without the conviction, this Petition has already been rendered moot and academic by virtue of the judicial finding of probable cause in the form of the Regional Trial Court's issuance of an arrest warrant against petitioner.

WHEREFORE, the Petition for Certiorari is DISMISSED. The January 27, 2015 Resolution and the February 20, 2015 Resolution of respondent Secretary of Justice Leila M. De Lima in I.S. No. III-10-INV-14J-01102 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Mendoza, JJ., concur.

[1] Rollo, pp. 3-71. The Petition is filed under Rule 65 of the 1997 Rules of Civil Procedure.

- [2] Id. at 75-87. The Resolution was penned by Undersecretary Jose Vicente B. Salazar for the Secretary of Justice.
- [3] Id. at 88-96. The Resolution was penned by Secretary of Justice Leila M. De Lima.
- [4] The case was entitled "Philippine National Police-Olongapo City; Marilou Laude y Serdoncillo v. L/CPL Joseph Scott Pemberton."
- [5] Rollo, p. 67, Petition for Certiorari.
- [6] Id. at 81, Department of Justice Resolution dated January 27, 2015.
- [7] Id. at 164-165.
- [8] Id. at 15, Petition for Certiorari.
- [9] Id. at 171-179.
- [10] Id. at 16, Petition for Certiorari.
- [11] Id.
- [12] Id. at 180-190.
- [13] Id. at 16-17, Petition for Certiorari.
- [14] Id. at 191-203.
- [15] Id. at 17, Petition for Certiorari.
- [16] Id. at 204, Minutes of the preliminary investigation hearing on October 27, 2014.
- [17] Id. at 18, Petition for Certiorari.
- [18] Id. at 212-223.
- [19] Id. at 18, Petition for Certiorari.
- [20] Id. at 18-19.
- [21] Id. at 20.
- [22] Id. at 271-273.
- [23] Id. at 20, Petition for Certiorari.
- [24] Id.
- [25] Id.
- [26] Id. at 21.
- [27] Id. at 406-409.
- [28] Id. at 23, Petition for Certiorari.
- [29] Id. at 87, Department of Justice Resolution dated January 27, 2015.
- [30] Id. at 81.

[31] Id. at 96.

[32] Id. at 3, Petition for Review.

[33] Id. at 24.

[34] Id.

[35] Id.

[36] Id. at 566, Office of the Solicitor General's Comment.

[37] Id. at 566-567.

[38] Id. at 573-574.

[39] 72 Phil. 278 (1941) [Per J. Moran, En Banc].

[40] Id. at 280.

[41] 517 Phil. 151 (2006) [Per J. Callejo, St., First Division].

[42] Id. at 171, citing *Nova v. Commission on Audit*, 419 Phil. 544, 554 (2001) [Per J. Buena, En Banc].

[43] *Chan v. Formaran III, et al.*, 572 Phil. 118 (2008) [Per J. Nachura, Third Division].

[44] Id. at 132.

[45] Rollo, pp. 82-85, Department of Justice Resolution dated January 27, 2015.

[46] *Suyan v. People*, G.R. No. 189644, July 2, 2014, 729 SCRA 1, 9-10 [Per C.J. Sereno, First Division].

[47] G.R. No. 205728, January 21, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf>> [Per J. Leonen, En Banc].

[48] Id. at 12-14, citing *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 432 (2005) [Per J. Austria-Martinez, Second Division]; *Fortich v. Corona*, 352 Phil. 461, 480 (1998) [Per J. Martinez, Second Division]; *Bañez, Jr. v. Conception*, 693 Phil. 399, 412 (2012) [Per J. Bersamin, First Division], in turn citing *Vergara v. Suelto*, 240 Phil. 719, 732-733 (1987) [Per J. Narvasa, First Division]; *Ynot v. Intermediate Appellate Court*, 232 Phil. 615, 621 (1987) [Per J. Cruz, En Banc]. See *J.M. Tuason & Co., Inc. et al. v. Court of Appeals, et al.*, 113 Phil. 673, 681 (1961) [Per J. J.B.L. Reyes, En Banc]; *Espiritu v. Fugoso*, 81 Phil. 637, 639 (1948) [Per J. Perfecto, En Banc].

[49] Id. at 15-18, citing *Aquino III v. COMELEC*, 631 Phil. 595, 612-613 (2010) [Per J. Perez, En Banc]; *Magallona v. Ermita*, 671 Phil. 243, 256-257 (2011) [Per J. Carpio, En Banc]; Thomas I. Emerson, TOWARD A GENERAL THEORY OF THE FIRST AMENDMENT, Faculty Scholarship Series, Paper 2796 (1963), as cited in *Gonzales, et al. v. COMELEC*, 137 Phil. 471, 493-494 (1969) [Per J. Fernando, En Banc]; *Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS, INC.) v. Power Sector Assets and Liabilities Management Corporation (PSALM)*, 696 Phil. 486, 519 (2012) [Per J. Villarama, Jr., En Banc]; *Agan, Jr. v. PIATCO*, 450 Phil. 744, 805 (2003) [Per J. Puno, En Banc]; *Soriano v. Laguardia*, 605 Phil. 43, 99 (2009) [Per J. Velasco, Jr., En Banc]; *Mallion v. Alcantara*, 536 Phil. 1049, 1053 (2006) [Per J. Azcuna, Second Division]; *Government of the United States v. Purganan*, 438 Phil. 417, 439 (2002) [Per J. Panganiban, En Banc]; *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140 [Per J. Cruz, En Banc]; *Albano v. Arranz*, 114 Phil. 318, 322 (1962) [Per J. J.B.L. Reyes, En Banc]; *Chong v. Dela Cruz*, 610 Phil. 725, 728 (2009) [Per J. Nachura, Third Division], in turn citing *Gelindon v. De la Rama*, G.R. No. 105072, December 9, 1993, 228 SCRA

322, 326-327 [Per J. Vitug, Third Division]; Chavez v. Romulo, G.R. No. 157036, June 9, 2004, 431 SCRA 534 [Per J. Sandoval-Gutierrez, En Banc]; COMELEC v. Quijano-Padilla, 438 Phil. 72 (2002) [Per J. Sandoval-Gutierrez, En Banc]; Buklod ng Kawaning EIIB v. Zamora, 413 Phil. 281 (2001) [Per J. Sandoval-Gutierrez, En Banc].

[50] Tolentino v. People, 532 Phil 429, 433 (2006) [Per J. Sandoval-Gutierrez, Second Division].

[51] Rollo, pp. 11-12, Petition for Certiorari.

[52] Id. at 12.

[53] Id.

[54] G.R. No. 209330, January 11, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf>> [Per J. Leonen, Second Division].

[55] Id. at 16-20, citing People v. Castillo and Mejia, 607 Phil. 754, 764-765 (2009) [Per J. Quisumbing, Second Division], in turn citing Paderanga v. Drilon, 273 Phil. 290, 296 (1991) [Per J. Regalado, En Banc], Roberts, Jr. v. Court of Appeals, 324 Phil. 568, 620-621 (1996) [Per J. Davide, Jr., En Banc], Ho v. People, 345 Phil. 597, 611 (1997) [Per J. Panganiban, En Banc]; Pilapil v. Sandiganbayan, G.R. No. 101978, April 7, 1993, 221 SCRA 349, 357 [Per J. Nocon, En Banc]; and Crespo v. Mogul, 235 Phil. 465, 474-476 (1987) [Per J. Gancayco, En Banc], in turn citing Herrera v. Barretto, 25 Phil. 245 (1913) [Per J. Moreland, En Banc], U.S. v. Limsiongco, 41 Phil. 94 (1920) [Per J. Malcolm, En Banc], De la Cruz v. Moir, 36 Phil. 213 (1917) [Per J. Moreland, En Banc], RULES OF COURT, Rule 110, sec. 1, RULES OF CRIM. PROC. (1985), sec. 1, 21 C.J.S. 123; Carrington, U.S. v. Barreto, 32 Phil. 444 (1917) [Per Curiam, En Banc], Asst. Provincial Fiscal of Bataan v. Dollete, 103 Phil. 914 (1958) [Per J. Montemayor, En Banc], People v. Zabala, 58 O. G. 5028, Galman v. Sandiganbayan, 228 Phil. 42 (1986) [Per C.J. Teehankee, En Banc], People v. Beriales, 162 Phil. 478 (1976) [Per J. Concepcion, Jr., Second Division], U.S. v. Despabiladeras, 32 Phil. 442 (1915) [Per J. Carson, En Banc], U.S. v. Gallegos, 37 Phil. 289 (1917) [Per J. Johnson, En Banc], People v. Hernandez, 69 Phil. 672 (1964) [Per J. Labrador, En Banc], U.S. v. Labial, 27 Phil. 82 (1914) [Per J. Carson, En Banc], U.S. v. Fernandez, 17 Phil. 539 (1910) [Per J. Torres, En Banc], People v. Velez, 11 Phil. 1026 (1947) [Per J. Feria, En Banc].

[56] Rollo, pp. 573-574, Office of the Solicitor General's Comment.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.