

## **VICENTE LIM, SR. AND MAYOR SUSANA LIM, PETITIONERS, VS. HON. NEMESIO S. FELIX AND HON. ANTONIO ALFANE, RESPONDENTS.**

*G.R. Nos. 94054-57. February 19, 1991*

Ponente: GUTIERREZ, JR., J.

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### **GUTIERREZ, JR., J.:**

May a Judge without ascertaining the facts through his own personal determination and relying solely on the certification or recommendation of a prosecutor that a probable cause exists issue a warrant of arrest?

On March 17, 1989, at about 7:30 o'clock in the morning, at the vicinity of the airport road of the Masbate Domestic Airport, located at the municipality of Masbate province of Masbate, Congressman Moises Espinosa, Sr. and his security escorts, namely Provincial Guards Antonio Cortes, Gaspar Amaro, and Artemio Fuentes were attacked and killed by a lone assassin. Dante Siblante another security escort of Congressman Espinosa, Sr. survived the assassination plot, although, he himself suffered a gunshot wound.

An investigation of the incident then followed.

Thereafter, and for the purpose of preliminary investigation, the designated investigator, Harry O. Tantiado, TSg, of the PC Criminal Investigation Service at Camp Bagong Ibalon, Legazpi City filed an amended complaint with the Municipal Trial Court of Masbate accusing, among others, Vicente Lim, Sr., Mayor Susana Lim of Masbate (petitioners in G.R. Nos. 94054-57), Jolly T. Fernandez, Florencio T. Fernandez, Jr., Nonilon A. Bagalihog, Mayor Nestor C. Lim and Mayor Antonio Kho (petitioners in G.R. Nos. 94266-69) of the crime of multiple murder and frustrated murder in connection with the airport incident. The case was docketed as Criminal Case No. 9211.

After conducting the preliminary investigation, the court issued an order dated July 31, 1989 stating therein that:

"xxx after weighing the affidavits and answers given by the witnesses for the prosecution during the preliminary examination in searching questions and answers, concludes that a probable cause has been established for the issuance of a warrant of arrest of named accused in the amended complaint, namely, Jimmy Cabarles, Ronnie Fernandez, Nonilon Bagalihog, Jolly Fernandez, Florencio Fernandez, Jr., Vicente Lim, Sr., Susana Lim, Nestor Lim, Antonio Kho, Jaime Liwanag, Zaldy Dumalag and Rene Tualla alias Tidoy." (Rollo, p. 58, G.R. Nos. 94054-57)

xxx xxx xxx

In the same Order, the court ordered the arrest of the petitioners and recommended the amount of P200,000.00 as bail for the provisional liberty of each of the accused.

Petitioners Jolly Fernandez and Nonilon Bagalihog filed a motion for the reduction of bail which was granted by the court and they were allowed to post bail in the amount of P150,000.00 each. Except for Jimmy Cabarles, all the rest of the accused posted bail at P200,000.00 each.

On August 29, 1989, the entire records of the case consisting of two hundred sixty one (261) pages were transmitted to the Provincial Prosecutor of Masbate. Respondent Acting Fiscal Antonio C. Alfane was designated to review the case.

On September 22, 1989, Fiscal Alfane issued a Resolution which affirmed the finding of a prima facie case against the petitioners but differed in the designation of the crime in that he ruled that "xxx all of the accused should not only be charged with Multiple Murder With Frustrated Murder" but for a case of MURDER for each of the killing of the four victims and a physical injuries case for inflicting gunshot wound on the buttocks of Dante Siblane." (Annex 'H', Comment of Fiscal Alfane, p. 186, Rollo, G.R. Nos. 94054-57) A motion to reconsider the Resolution filed by petitioners Vicente Lim, Sr. and Mayor Susana Lim was denied.

On October 30, 1989, Fiscal Alfane filed with the Regional Trial Court of Masbate, four (4) separate informations of murder against the twelve (12) accused with a recommendation of no bail.

On November 21, 1989, petitioners Vicente Lim, Sr. and Susana Lim filed with us a verified petition for change of venue. (Case No. A.M. No. 89-11-1270-MTC, formerly, G.R. Nos. 90587-90).

On December 14, 1989, we issued an en banc Resolution authorizing the change of venue from the Regional Trial Court of Masbate to the Regional Trial Court of Makati to avoid a miscarriage of justice, to wit:

"Acting on the petition for change of venue of the trial of Criminal Cases Nos. 5811, 5812, 5813, and 5814 from the Regional Trial Court, Masbate, Masbate to any of the Regional Trial Courts at Quezon City or Makati, the Court Resolved to (a) GRANT the aforesaid petition for transfer of venue in order to avoid miscarriage of justice (Article VIII, Section 5(4) of the Philippine Constitution); (b) DIRECT the Clerk of Court, Regional Trial Court, Masbate, Masbate to transmit the records of the aforesaid cases to the Executive Judge, Regional Trial Court, Makati, for raffling among the other branches of the court; and (c) ORDER the Regional Trial Court of Masbate, Masbate to desist from further taking cognizance of the said cases until such time that the petition is finally resolved."

The cases were raffled to Branch 56 presided by respondent Judge Nemesio S. Felix.

Petitioners Vicente Lim, Sr. and Susana Lim filed with the respondent court several motions and manifestations which in substance prayed for the following:

- "1. An order be issued requiring the transmittal of the initial records of the preliminary inquiry or investigation conducted by the Municipal Judge Barsaga of Masbate for the best enlightenment of this Honorable Court in its personal determination of the existence of a probable cause or prima facie evidence as well as its determination of the existence of guilt, pursuant to the mandatory mandate of the constitution that no warrant shall issue unless the issuing magistrate shall have himself been personally convinced of such probable cause.
2. Movants be given ample opportunity to file their motion for preliminary investigation as a matter of right; and
3. In the event that this court may later be convinced of the existence of a probable cause, to be allowed to file a motion for reduction of bail or for admission of bail." (p. 17, Rollo, G.R. Nos. 94054-57).

In another manifestation, the Lims reiterated that the court conduct a hearing to determine if there really exists a prima facie case against them in the light of documents which are recantations of some witnesses in the preliminary investigation. The motions and manifestations were opposed by the prosecution.

On July 5, 1990, the respondent court issued an order denying for lack of merit the motions and manifestations and issued warrants of arrest against the accused including the petitioners herein. The respondent Judge said:

"In the instant cases, the preliminary investigation was conducted by the Municipal Trial Court of Masbate, Masbate which found the existence of probable cause that the offense of multiple murder was committed and that all the accused are probably guilty thereof, which was affirmed upon review by the Provincial Prosecutor who properly filed with the Regional Trial Court four separate informations for murder. Considering that both the two competent officers to whom such duty was entrusted by law have declared the existence of probable cause, each information is complete in form and substance, and there is no visible defect on its face, this Court finds it just and proper to rely on the prosecutor's certification in each information which reads:" (pp. 19-20, Rollo, G.R. Nos. 94054-57; Emphasis supplied)

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The petitioners then filed these consolidated petitions questioning the July 5, 1990 Order.

In a Resolution dated July 17, 1990 in G.R. Nos. 94054-57, we issued "xxx a TEMPORARY RESTRAINING ORDER, effective immediately and continuing until further orders from this Court, ordering the respondent judge or his duly authorized representatives or agents to CEASE and DESIST from enforcing or implementing the warrant of arrest without bail issued against the petitioners in his Order dated July 5, 1990 in Criminal Cases Nos. 5811-14."

In another Resolution dated July 31, 1990 in G.R. Nos. 94266-69, we resolved:

xxx xxx xxx

"xxxTo ISSUE writs of (1) PRELIMINARY MANDATORY INJUNCTION, ordering and directing the respondent judge to recall/set aside and/or annul the legal effects of the warrants of arrest without bail issued against and served upon herein petitioners Jolly T. Fernandez, Florencio T. Fernandez, Jr. and Nonilon Bagalihog and release them from confinement at PC-CIS Detention Center, Camp Crame, Quezon City; and (2) TEMPORARY RESTRAINING ORDER, effective immediately and continuing until further orders from this Court, ordering the respondent judge or his duly authorized representatives or agents, to CEASE and DESIST from enforcing or implementing the warrants of arrest without bail issued against petitioners Mayors Nestor C. Lim and Antonio T. Kho."

The primary issue in these consolidated petitions centers on whether or not a judge may issue a warrant of arrest without bail by simply relying on the prosecution's certification and recommendation that a probable cause exists.

This is not a novel question. In the case of *Placer v. Villanueva* (126 SCRA 463 [1983]), we ruled that a judge may rely upon the fiscal's certification of the existence of probable cause and, on the basis thereof, issue a warrant of arrest. However, the certification does not bind the judge to come out with the warrant of arrest. This decision interpreted the "search and seizure" provision of the 1973 Constitution which provides:

"x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce x x x."

We ruled:

"x x x The issuance of a warrant is not a mere ministerial function; it calls for the exercise of judicial discretion on the part of the issuing magistrate. This is clear from the following provisions of Section 6, Rule- 112 of the Rules of Court.

Warrant of arrest, when issued. - If the judge be satisfied from the preliminary examination conducted by him or by the investigating officer that the offense complained of has been committed and that there is reasonable ground to believe that the accused has committed it, he must issue a warrant or order for his arrest.

Under this section, the judge must satisfy himself of the existence of probable cause before issuing a warrant or order of arrest. If on the face of the information the judge finds no probable cause, he may disregard the fiscal's certification and require the submission of the affidavits of witnesses to aid him in arriving at a conclusion as to the existence of a probable cause. This has been the rule since *U. S. v. Ocampo* (18 Phil. 1) and *Amarga v. Abbas* (98 Phil. 739). And this evidently is the reason for the issuance by respondent of the questioned orders of April 13, 15, 16, 19, 1982 and July 13, 1982. Without the affidavits of the prosecution witnesses and other evidence which, as a matter of long-standing practice had been attached to the information filed in his sala, respondent found the informations inadequate bases for the determination of probable cause. For as the ensuing events would show, after petitioners had submitted the required affidavits, respondent wasted no time in issuing the warrants of arrest in the case where he was satisfied that probable cause existed."

The case of *Soliven v. Makasiar* (167 SCRA 393 [1988]) was decided after the effectivity of the 1987 Constitution. We stated:

"The second issue, raised by petitioner Beltran, calls for an interpretation of the constitutional provision on the issuance of warrants of arrest. The pertinent provision reads:

'Art. III, Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.'

The addition of the word 'personally' after the word 'determined' and the deletion of the grant of authority by the 1973 Constitution to issue warrants to 'other respondent officers as may be authorized by law', has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses in his determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedures, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examinations and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts."

The decision in *People v. Honorable Enrique B. Inting, et al.* (G.R. No. 88919, July 25, 1990), reiterated the above interpretation of "personal" determination by the Judge:

"We emphasize important features of the constitutional mandate that 'x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally the by judge x x x' (Article III, Section 2, Constitution).

First, the determination of probable cause is a function of the Judge. It is not for the Provincial Fiscal or Prosecutor nor for the Election Supervisor to ascertain. Only the Judge and the Judge alone makes this determination.

Second, the preliminary inquiry made by a Prosecutor does not bind the Judge. It merely assists him to make the determination of probable cause. The Judge does not have to follow what the Prosecutor presents to him. By itself, the Prosecutor's certification of probable cause is ineffectual. It is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the Prosecutor's certification which are material in assisting the Judge to make his determination.

And third, Judges and Prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or released. Even if the two inquiries are conducted in the course of one and the same proceeding, there should be no confusion about the objectives. The determination of probable cause for the warrant of arrest is made by the Judge. The preliminary investigation proper - whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial - is the function of the Prosecutor.

The Court made this clear in the case of *Castillo v. Villaluz* (171 SCRA 39 [1989]):

'Judges of Regional Trial Courts (formerly Courts of First Instance) no longer have authority to' conduct preliminary investigations, That authority, at one time reposed in them under Sections 13, 14 and 16, Rule 112 of the Rules of Court of 1964, (See Sec. 4, Rule 108, Rules of Court of 1940; *People v. Solon*, 47 Phil. 443, cited in *Moran*, Comments on the Rules, 1980 ed., Vol. 4, pp. 115-116) was removed from them by the 1985 Rules on Criminal Procedure, effective on January 1, 1985, (Promulgated on November 11, 1984) which deleted all provisions granting that power to said Judges. We had occasion to point this out in *Salta v. Court of Appeals*, 143 SCRA 228, and to stress as well certain other basic propositions, namely: (1) that the conduct of a preliminary investigation is 'not a judicial function x x x (but) part of the prosecution's job, a function of the executive,' (2) that whenever 'there are enough fiscals or prosecutors to conduct preliminary investigations, courts are counseled to leave this job which is essentially executive to them,' and the fact 'that a certain power is granted does not necessary mean that it should be indiscriminately exercised.

The 1988 Amendments to the 1985 Rules on Criminal Procedure, declared effective on October 1, 1988, (The 1988 Amendments were published in the issue of *Bulletin Today* of October 29, 1988) did not restore that authority to Judges of Regional Trial Courts; said amendments did not in fact deal at all with the officers or courts having authority to conduct preliminary investigations.

This is not to say, however, that somewhere along the line RTC Judges also lost the power to make a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest (or search warrant). Such a power -- indeed, it is as much a duty as it is a power -- has been and remains vested in every judge by the provisions in the Bill of Rights in the 1935, the 1973 and the present [1987] Constitutions securing the people against unreasonable searches and seizures, thereby placing it beyond the competence of mere Court Rule or Statute to revoke. The distinction must, therefore, be made clear while an RTC Judge may no longer conduct preliminary investigations to ascertain whether there is sufficient ground for the filing of a criminal complaint or information, he retains the authority, when such a pleading is filed with his court, to determine whether there is probable cause justifying the issuance of a warrant of arrest. It might be added that this distinction accords, rather than conflicts, with the rationale of *Salta* because both law and rule, in restricting to judges the authority to order arrest, recognize the function to be judicial in nature.'

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the Judge. x x x."

Finally in the recent case of *People v. Delgado, et al.* (G. R. Nos. 93419-32, September 18, 1990) there is a statement that the judge may rely on the resolution of COMELEC to file the information by the same token that it

may rely on the certification made by the prosecutor who conducted the preliminary investigation in the issuance of the warrant of arrest. We, however, also reiterated that "x x x the court may require that the record of the preliminary investigation be submitted to it to satisfy itself that there is probable cause which will warrant the issuance of a warrant of arrest." (Section 2, Article III, Constitution). Reliance on the COMELEC resolution or the Prosecutor's certification presupposes that the records of either the COMELEC or the Prosecutor have been submitted to the Judge and he relies on the certification or resolution because the records of the investigation sustain the recommendation. The warrant issues not on the strength of the certification standing alone but because of the records which sustain it.

It is obvious from the present petition that notwithstanding the above decisions, some Judges are still bound by the inertia of decisions and practice under the 1935 and 1973 Constitutions and are sadly confused or hesitant. Prosecutors are also interested in a clear cut ruling. We will, therefore, restate the rule in greater detail and hopefully clearer terms.

There is no problem with search warrants which are relatively fewer and far between and where there is no duplication of work between the Judge and the Prosecutor. The problem lies with warrants of arrest especially in metropolitan or highly urban areas. If a judge has to personally question each complainant and witness or go over the records of the Prosecutor's investigation page by page and word for word before he acts on each of a big pile of applications for arrest warrants on his desk, he or she may have no more time for his or her more important judicial functions.

At the same time, the Judge cannot ignore the clear words of the 1987 Constitution which requires "x x x probable cause to be personally determined by the Judge x x x", not by any other officer or person.

If a Judge relies solely on the certification of the Prosecutor as in this case where all the records of the investigation are in Masbate, he or she has not personally determined probable cause. The determination is made by the Provincial Prosecutor. The constitutional requirement has not been satisfied. The Judge commits a grave abuse of discretion.

The records of the preliminary investigation conducted by the Municipal Court of Masbate and reviewed by the respondent Fiscal were still in Masbate when the respondent Fiscal issued the warrants of arrest against the petitioners. There was no basis for the respondent Judge to make his own personal determination regarding the existence of a probable cause for the issuance of a warrant of arrest as mandated by the Constitution. He could not possibly have known what transpired in Masbate as he had nothing but a certification. Significantly, the respondent Judge denied the petitioners' motion for the transmittal of the records on the ground that the mere certification and recommendation of the respondent Fiscal that a probable cause exists is sufficient for him to issue a warrant of arrest.

We reiterate the ruling in *Soliven v. Makasiar* that the Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.

The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when circumstances of the case so

require.

It is worthy to note that petitioners Vicente Lim, Sr. and Susana Lim presented to the respondent Judge documents of recantation of witnesses whose testimonies were used to establish a prima facie case against them. Although, the general rule is that recantations are not given much weight in the determination of a case and in the granting of a new trial (*Tan Ang Bun v. Court of Appeals, et al.* G. R. No. L-47747, February 15, 1990, *People v. Lao Wan Sing*, 46 SCRA 298 [1972]) the respondent Judge before issuing his own warrants of arrest should, at the very least, have gone over the records of the preliminary examination conducted earlier in the light of the evidence now presented by the concerned witnesses in view of the "political undertones" prevailing in the cases. Even the Solicitor General recognized the significance of the recantations of some witnesses when he recommends a reinvestigation of the cases, to wit:

"It must be pointed out, however, that among the documents attached to this Petition are `affidavits of recantation subsequently executed by Jimmy Cabarles and Danilo Lozano and an affidavit executed by one, Camilo Sanano, father of the complainant's witnesses, Renato and Romeo Sanano. It was precisely on the strength of these earlier written statements of these witnesses that the Municipal Trial Court of Masbate found the existence of a prima facie case against petitioners and accordingly recommended the filing of a Criminal Information. Evidently, the same written statements were also the very basis of the 'Fiscal's Certification', since the attached affidavits of recantation were not yet then available. Since the credibility of the prosecution witnesses is now assailed and put in issue and, since the petitioners have not yet been arraigned, it would be to the broader interest of justice and fair play if a reinvestigation of this case be had to secure the petitioners against hasty prosecution and to protect them from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trials (*Salonga v. Paño*, G. R. No. 59524, February 18, 1985). (Rollo of G. R. Nos. 94054-56, pp. 200-201)

We reiterate that in making the required personal determination, a Judge is not precluded from relying on the evidence earlier gathered by responsible officers. The extent of the reliance depends on the circumstances of each case and is subject to the Judge's sound discretion. However, the Judge abuses that discretion when having no evidence before him, he issues a warrant of arrest.

Indubitably, the respondent Judge committed a grave error when he relied solely on the Prosecutor's certification and issued the questioned Order dated July 5, 1990 without having before him any other basis for his personal determination of the existence of a probable cause.

WHEREFORE, the instant petitions are hereby GRANTED. The questioned Order of respondent Judge Nemesio S. Felix of Branch 56, Regional Trial Court of Makati dated July 5, 1990 is declared NULL and VOID and SET ASIDE. The Temporary Restraining Orders and Preliminary Mandatory Injunction issued in the instant Petitions are made PERMANENT.

### **SO ORDERED.**

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Sarmiento, J., no part, the victim was a close friend and compadre.

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