EN BANC

PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

HON. MA. THERESA L. DELA TORRE-YADAO, in her capacity as Presiding Judge, Branch 81, Regional Trial Court of Quezon City, HON. MA. NATIVIDAD M. DIZON, in her capacity as Executive Judge of the Regional Trial Court of Quezon City, PANFILO M. LACSON, JEWEL F. CANSON, ROMEO M. ACOP, FRANCISCO G. ZUBIA, JR., MICHAEL RAY B. AQUINO, CEZAR O. MANCAO II, ZOROBABEL S. LAURELES, GLENN G. DUMLAO, ALMARIO A. HILARIO, JOSE ERWIN T. VILLACORTE, GIL C. MENESES, ROLANDO ANDUYAN, JOSELITO T. ESQUIVEL, RICARDO G. DANDAN, CEASAR TANNAGAN, VICENTE P. ARNADO, ROBERTO T. LANGCAUON, ANGELITO N. CAISIP, ANTONIO FRIAS, CICERO S. BACOLOD, WILLY

G.R. Nos. 162144-54

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES, and
PERLAS-BERNABE, *JJ*.

NUAS, JUANITO B. MANAOIS, VIRGILIO V. PARAGAS, ROLANDO R. JIMENEZ, CECILIO T. MORITO, REYNALDO C. LAS PIÑAS, WILFREDO G. CUARTERO, ROBERTO O. AGBALOG, OSMUNDO B. CARIÑO, NORBERTO LASAGA, LEONARDO GLORIA, ALEJANDRO G. LIWANAG, ELMER FERRER and ROMY CRUZ,

Respondents.

Promulgated:

NOVEMBER 13, 2012

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DECISION

ABAD, *J.*:

This case, which involves the alleged summary execution of suspected members of the *Kuratong Baleleng* Gang, is once again before this Court this time questioning, among other things, the trial court's determination of the absence of probable cause and its dismissal of the criminal actions.[1]

The Facts and the Case

In the early morning of May 18, 1995, the combined forces of the Philippine National Police's Anti-Bank Robbery and Intelligence Task Group (PNP ABRITG) composed of Task Force Habagat (then headed by Police Chief Superintendent Panfilo M. Lacson), Traffic Management Command ([TMC] led by then Police Senior Superintendent Francisco G. Zubia, Jr.), Criminal Investigation Command (led by then Police Chief Superintendent Romeo M. Acop), and National Capital Region Command (headed by then Police Chief Superintendent Jewel F. Canson) killed 11

[1] See *Lacson v. The Executive Secretary*, 361 Phil. 251 (1999); *People v. Lacson*, 432 Phil. 113 (2002); *People v. Lacson*, 448 Phil. 317 (2003).

suspected members of the *Kuratong Baleleng* Gang[2] along Commonwealth Avenue in Quezon City.

Subsequently, SPO2 Eduardo Delos Reyes of the Criminal Investigation Command told the press that it was a summary execution, not a shoot-out between the police and those who were slain. After investigation, the Deputy Ombudsman for Military Affairs absolved all the police officers involved, including respondents Panfilo M. Lacson, Jewel F. Canson, Romeo M. Acop, Francisco G. Zubia, Jr., Michael Ray B. Aquino, Cezar O. Mancao II, and 28 others (collectively, the respondents).[3] On review, however, the Office of the Ombudsman reversed the finding and filed charges of murder against the police officers involved before the Sandiganbayan in Criminal Cases 23047 to 57, except that in the cases of respondents Zubia, Acop, and Lacson, their liabilities were downgraded to mere accessory. On arraignment, Lacson pleaded not guilty.

Upon respondents' motion, the Sandiganbayan ordered the transfer of their cases to the Regional Trial Court (RTC) of Quezon City on the ground that none of the principal accused had the rank of Chief Superintendent or higher. Pending the resolution of the Office of the Special Prosecutor's motion for reconsideration of the transfer order, Congress passed Republic Act (R.A.) 8249 that expanded the Sandiganbayan's jurisdiction by deleting the word "principal" from the phrase "principal accused" to apply to all pending cases where trial had not begun. As a result of this new law, the Sandiganbayan opted to retain and try the *Kuratong Baleleng* murder cases.

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[2] Namely: Manuel Montero, Rolando Siplon, Sherwyn Abalora, Ray Abalora, Joel Amora, Hilario Jevy Redillas, Meleubren Sorronda, Pacifico Montero, Jr., Welbor Elcamel, Carlito Alap-ap and Tirso Daig @ Alex Neri.

[3] Namely: Zorobabel S. Laureles, Glenn G. Dumlao, Almario A. Hilario, Jose Erwin T. Villacorte, Gil C. Meneses, Rolando Anduyan, Joselito T. Esquivel, Ricardo G. Dandan, Ceasar Tannagan, Vicente P. Arnado, Roberto T. Langcauon, Angelito N. Caisip, Antonio Frias, Cicero S. Bacolod, Willy Nuas, Juanito B. Manaois, Virgilio V. Paragas, Rolando R. Jimenez, Cecilio T. Morito, Reynaldo C. Las Piñas, Wilfredo G. Cuartero, Roberto O. Agbalog, Osmundo B. Cariño, Norberto Lasaga, Leonardo Gloria, Alejandro G. Liwanag, Elmer Ferrer, and Romy Cruz.

Respondent Lacson challenged the constitutionality of R.A. 8249 in G.R. 128096[4] but this Court upheld its validity. Nonetheless, the Court ordered the transfer of the trial of the cases to the RTC of Quezon City since the amended informations contained no allegations that respondents committed the offenses charged in relation to, or in the discharge of, their official functions as required by R.A. 8249.

Before the RTC of Quezon City, Branch 81, then presided over by Judge Wenceslao Agnir, Jr., could arraign respondents in the re-docketed Criminal Cases Q-99-81679 to 89, however, SPO2 Delos Reyes and the other prosecution witnesses recanted their affidavits. Some of the victims' heirs also executed affidavits of desistance. These prompted the respondents to file separate motions for the determination of probable cause before the issuance of warrants of arrests.

On March 29, 1999 the RTC of Quezon City ordered the provisional dismissal of the cases for lack of probable cause to hold the accused for trial following the recantation of the principal prosecution witnesses and the desistance of the private complainants.

Two years later or on March 27, 2001 PNP Director Leandro R. Mendoza sought to revive the cases against respondents by requesting the Department of Justice (DOJ) to conduct another preliminary investigation in their cases on the strength of the affidavits of P/Insp. Ysmael S. Yu and P/S Insp. Abelardo Ramos. In response, then DOJ Secretary Hernando B. Perez constituted a panel of prosecutors to conduct the requested investigation.

Invoking their constitutional right against double jeopardy, Lacson

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[4] *Lacson v. The Executive Secretary*, supra note 1.

and his co-accused filed a petition for prohibition with application for temporary restraining order and writ of preliminary injunction before the RTC of Manila in Civil Case 01-100933. In an Order dated June 5, 2001, that court denied the plea for temporary restraining order. Thus, on June 6, 2001 the panel of prosecutors found probable cause to hold Lacson and his co-accused liable as principals for 11 counts of murder, resulting in the filing of separate informations against them in Criminal Cases 01-101102 to 12 before the RTC of Quezon City, Branch 81, now presided over by respondent Judge Ma. Theresa L. Yadao.

On the same day, respondent Lacson filed a petition for *certiorari* before the Court of Appeals (CA), assailing the RTC of Manila's order which allowed the renewed preliminary investigation of the murder charges against him and his co-accused. Lacson also filed with the RTC of Quezon City a motion for judicial determination of probable cause. But on June 13, 2001 he sought the suspension of the proceedings in that court.

In the meantime, the CA issued a temporary restraining order enjoining the RTC of Quezon City from issuing warrants of arrest or conducting any proceeding in Criminal Cases 01-101102 to 12 before it. On August 24, 2001 the CA rendered a Decision, granting Lacson's petition on the ground of double jeopardy since, although the dismissal of Criminal Cases Q-99-81679 to 89 was provisional, such dismissal became permanent two years after when they were not revived.

Upon the prosecution's appeal to this Court in G.R. 149453,[5] the Court ruled that, based on the record, Lacson failed to prove compliance with the requirements of Section 8, Rule 117 governing provisional dismissals. The records showed that the prosecution did not file a motion for provisional

[5] *People v. Lacson*, supra note 1.

dismissal and, for his part, respondent Lacson had merely filed a motion for judicial determination of probable cause. Nowhere did he agree to some proposal for a provisional dismissal of the cases. Furthermore, the heirs of the victims had no notice of any motion for such provisional dismissal.

The Court thus set aside the CA Decision of August 24, 2001 and directed the RTC of Quezon City to try the cases with dispatch. On motion for reconsideration by respondent Lacson, the Court ordered the re-raffle of the criminal cases to a heinous crimes court. Upon re-raffle, however, the cases still went to Branch 81, which as already stated was now presided over by Judge Yadao.

On October 12, 2003 the parents of two of the victims submitted birth certificates showing that they were minors. Apparently reacting to this, the prosecution amended the informations to show such minority and asked respondent Executive Judge Ma. Natividad M. Dizon to recall the assignment of the cases to Branch 81 and re-raffle them to a family court. The request for recall was denied.

On October 20, 2003 the prosecution filed an omnibus motion before Branch 81, praying for the re-raffle of Criminal Cases 01-101102 to12 to the family courts in view of the changes in the two informations. On October 24, 2003 the prosecution also filed its consolidated comment *ex-abundanti cautela* on the motions to determine probable cause.

On November 12, 2003[6] Judge Yadao issued an order, denying the prosecution's motion for re-raffle to a family court on the ground that Section 5 of R.A. 8369 applied only to living minors. She also granted the motions for determination of probable cause and dismissed the cases against

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[6] *Rollo*, Vol. I, pp. 235-251.

the respondents since the affidavits of the prosecution witnesses were inconsistent with those they submitted in the preliminary investigations before the Ombudsman for the crime of robbery.

On November 25, 2003 the prosecution filed a verified motion to recuse or disqualify Judge Yadao and for reconsideration of her order. It also filed an administrative complaint against her for dishonesty, conduct prejudicial to the best interests of the service, manifest partiality, and knowingly rendering an unjust judgment.[7] On January 14, 2004, the prosecution filed an urgent supplemental motion for compulsory disqualification with motion for cancellation of the hearing on motion for reconsideration.

On January 21, 2004 Judge Yadao issued an order, denying the motion to recuse her, prompting the prosecution to appeal from that order. Further, on January 22, 2004 Judge Yadao issued another order, denying the prosecution's motion for reconsideration of the Order dated November 12, 2003 that dismissed the action against the respondents. In response, the prosecution filed a notice of appeal from the same. Finally, on January 26, 2004 Judge Yadao issued an order, denying the prosecution's motion for reconsideration of its January 16, 2004 Order not only for lack of merit but also for having become moot and academic.

On February 16, 2004 the prosecution withdrew *ex-abundanti cautela* the notices of appeal that it filed in the cases. Subsequently, on March 3, 2004 it filed the present special civil action of *certiorari*.

The Issues Presented

The prosecution presents the following issues:

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[7] Id., Vol. II, pp. 768-796; Dismissed on May 17, 2004, see *rollo*, Vol. IV, pp. 3225-3226.

1. Whether or not Executive Judge Dizon gravely abused her discretion in allowing Criminal Cases 01-101102 to 12 to be re-raffled to other than among the RTC of Quezon City's family courts.

2. Whether or not Judge Yadao gravely abused her discretion when she took cognizance of Criminal Cases 01-101102 to 12 contrary to the prosecution's view that such cases fell under the jurisdiction of family courts.

3. Whether or not Judge Yadao gravely abused her discretion when she did not inhibit and disqualify herself from taking cognizance of the cases.

4. Whether or not Judge Yadao gravely abused her discretion when she dismissed the criminal actions on the ground of lack of probable cause and barred the presentation of additional evidence in support of the prosecution's motion for reconsideration.

5. Whether or not Judge Yadao gravely abused her discretion when she adopted certain policies concerning the conduct of hearings in her court.

The Court's Rulings

Before addressing the above issues, the Court notes respondents' contention that the prosecution's resort to special civil action of *certiorari* under Rule 65 is improper. Since the trial court dismissed the criminal actions against respondents, the prosecution's remedy was to appeal to the CA from that order of dismissal.

Ordinarily, the proper remedy from an order dismissing an action is an appeal.[8] Here, the prosecution in fact filed a notice of appeal from such an order issued in the subject cases. But it reconsidered its action and withdrew that notice, believing that appeal was not an effective, speedy, and adequate

[8] *Santos v. Orda, Jr.*, G.R. No. 189402, May 6, 2010, 620 SCRA 375, 383.

remedy.[9] In other words, the prosecution's move was not a case of forgotten remedy but a conscious resort to another based on a belief that respondent Judge Yadao gravely abused her discretion in issuing her various orders and that *certiorari* under Rule 65 was the proper and all-encompassing remedy for the prosecution. The Court is not prepared to say that the remedy is altogether implausible as to throw out the petition outright.

Still, the Court notes that the prosecution skipped the CA and filed its action directly with this Court, ignoring the principle of judicial hierarchy of courts. Although the Supreme Court, the CA, and the RTCs have concurrent jurisdiction to issue a writ of *certiorari*, such concurrence does not give the People the unrestricted freedom of choice of forum.[10] In any case, the immense public interest in these cases, the considerable length of time that has passed since the crime took place, and the numerous times these cases have come before this Court probably warrant a waiver of such procedural lapse.

1. Raffle of the Cases

The prosecution points out that the RTC of Quezon City Executive Judge gravely abused her discretion when she placed Criminal Cases 01-101102 to 12 under a separate category which did not restrict their raffle to the city's special criminal and family courts in accordance with SC Administrative Order 36-96. Further, the prosecution points out that she violated Administrative Order 19-98 when Branches 219 and 102 were left out of the raffle. The presiding judges of these two branches, both heinous crimes courts eligible to receive cases by raffle, had just been appointed to the CA.

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[9] *Rollo*, Vol. II, p. 1244.
[10] *AAA v. Carbonell*, G.R. No. 171465, June 8, 2007, 524 SCRA 496, 506.

The records of the cases show nothing irregular in the conduct of the raffle of the subject cases. The raffle maintained a separate list for criminal and civil cases. Criminal cases cognizable by special criminal courts were separately listed. Criminal Cases 01-101102 to 12 were given a separate heading, "Re-Raffle," but there was nothing irregular in this since it merely indicated that the cases were not being raffled for the first time.

The Executive Judge did not err in leaving out Branches 219 and 102 from raffle since these branches remained without regularly appointed judges. Although the pairing judges of these branches had authority to act on incidental, interlocutory, and urgent matters, this did not mean that such branches should already be included in the raffle of cases.

Parenthetically, the prosecution was represented during the raffle yet it did not then object to the manner by which it was conducted. The prosecution raised the question only when it filed this petition, a clear afterthought.

2. Jurisdiction of Family Courts

The prosecution points out that, although this Court's October 7, 2003 Resolution directed a re-raffle of the cases to a heinous crimes court, the prosecution in the meantime amended the informations to reflect the fact that two of the murder victims were minors. For this reason, the Executive Judge should have raffled the cases to a family court pursuant to Section 5 of R.A. 8369.

The Court is not impervious to the provisions of Section 5 of R.A. 8369, that vests in family courts jurisdiction over violations of R.A. 7610, which in turn covers murder cases where the victim is a minor. Thus:

> Sec. 5. Jurisdiction of Family Courts. – The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:
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> a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or **where one or more of the victims is a minor at the time of the commission of the offense**: *Provided*, That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the respondent may have incurred. (Emphasis supplied)

Undoubtedly, in vesting in family courts exclusive original jurisdiction over criminal cases involving minors, the law but seeks to protect their welfare and best interests. For this reason, when the need for such protection is not compromised, the Court is able to relax the rule. In several cases,[11] for instance, the Court has held that the CA enjoys concurrent jurisdiction with the family courts in hearing petitions for *habeas corpus* involving minors.

Here, the two minor victims, for whose interests the people wanted the murder cases moved to a family court, are dead. As respondents aptly point out, there is no living minor in the murder cases that require the special attention and protection of a family court. In fact, no minor would appear as party in those cases during trial since the minor victims are represented by their parents who had become the real private offended parties.

3. Inhibition of Judge Yadao

The prosecution claims that Judge Yadao committed grave abuse of discretion in failing to inhibit herself from hearing the cases against the respondents.

The rules governing the disqualification of judges are found, first, in Section 1, Rule 137 of the Rules of Court, which provides:

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[11] *Madriñan v. Madriñan*, G.R. No. 159374, July 12, 2007, 527 SCRA 487; *Thornton v. Thornton*, 480 Phil. 224 (2004).

> Sec. 1. *Disqualification of judges.* – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
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> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

and in Rule 3.12, Canon 3 of the Code of Judicial Conduct, which states:

> Rule 3.12. – A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include among others, proceedings where:
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> (a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
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> x x x x
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> (e) the judge knows the judge's spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding. In every instance, the judge shall indicate the legal reason for inhibition.

The first paragraph of Section 1, Rule 137 and Rule 3.12, Canon 3 provide for the compulsory disqualification of a judge while the second paragraph of Section 1, Rule 137 provides for his voluntary inhibition.

The matter of voluntary inhibition is primarily a matter of conscience and sound discretion on the part of the judge since he is in a better position to determine whether a given situation would unfairly affect his attitude towards the parties or their cases. The mere imputation of bias, partiality, and prejudgment is not enough ground, absent clear and convincing evidence that can overcome the presumption that the judge will perform his

duties according to law without fear or favor. The Court will not disqualify a judge based on speculations and surmises or the adverse nature of the judge's rulings towards those who seek to inhibit him.[12]

Here, the prosecution contends that Judge Yadao should have inhibited herself for improperly submitting to a public interview on the day following her dismissal of the criminal cases against the respondents. But the Court finds nothing basically reprehensible in such interview. Judge Yadao's dismissal of the multiple murder cases aroused natural public interest and stirred the media into frenzy for correct information. Judge Yadao simply accommodated, not sought, the requests for such an interview to clarify the basis of her order. There is no allegation that she gave out false information. To be sure, the prosecution never once accused her of making public disclosures regarding the merits of those cases prior to her order dismissing such cases.

The prosecution also assails as constituting bias Judge Yadao's statement that a very close relative stood to be promoted if she was to issue a warrant of arrest against the respondents. But this statement merely shows that she cannot be dissuaded by some relative who is close to her. How can this constitute bias? Besides, there is no evidence that the close relative she referred to was her spouse or child which would be a mandatory ground for disqualification.

Further, the prosecution claims that Judge Yadao prejudged its motion for reconsideration when she said in her comment to the administrative complaint against her that such motion was merely the prosecution's stubborn insistence on the existence of probable cause against the respondents. The comment could of course not be regarded as a

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[12] *Spouses Abrajano v. Heirs of Augusto F. Salas, Jr.*, 517 Phil. 663, 674-675 (2006).

prejudgment of the issue since she had precisely already issued an order holding that the complainant's evidence failed to establish probable cause against the respondents. And there is nothing wrong about characterizing a motion for reconsideration as a "stubborn" position taken by the party who filed it. Judge Yadao did not characterize the motion as wholly unjustified at the time she filed her comment.

4. Dismissal of the Criminal Cases

The prosecution claims that Judge Yadao gravely abused her discretion when she set the motions for determination of probable cause for hearing, deferred the issuance of warrants of arrest, and allowed the defense to mark its evidence and argue its case. The prosecution stresses that under Section 6, Rule 112 of the Rules of Court Judge Yadao's duty was to determine probable cause for the purpose of issuing the arrest warrants solely on the basis of the investigating prosecutor's resolution as well as the informations and their supporting documents. And, if she had some doubts as to the existence of probable cause, the rules required her to order the investigating prosecutor to present additional evidence to support the finding of probable cause within five days from notice.

Rather than take limited action, said the prosecution, Judge Yadao dug up and adopted the Ombudsman's findings when the latter conducted its preliminary investigation of the crime of robbery in 1996. Judge Yadao gave weight to the affidavits submitted in that earlier preliminary investigation when such documents are proper for presentation during the trial of the cases. The prosecution added that the affidavits of P/S Insp. Abelardo Ramos and SPO1 Wilmor B. Medes reasonably explained the prior inconsistent affidavits they submitted before the Ombudsman.

The general rule of course is that the judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a *de novo* hearing. The judge only needs to personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence.[13]

But here, the prosecution conceded that their own witnesses tried to explain in their new affidavits the inconsistent statements that they earlier submitted to the Office of the Ombudsman. Consequently, it was not unreasonable for Judge Yadao, for the purpose of determining probable cause based on those affidavits, to hold a hearing and examine the inconsistent statements and related documents that the witnesses themselves brought up and were part of the records. Besides, she received no new evidence from the respondents.[14]

The public prosecutor submitted the following affidavits and documents along with the criminal informations to enable Judge Yadao to determine the presence of probable cause against the respondents:

1. P/Insp. Ysmael S. Yu's affidavit of March 24, 2001[15] in which he said that on May 17, 1995 respondent Canson, NCR Command Head, ordered him to form two teams that would go after suspected *Kuratong Baleleng* Gang members who were seen at the Superville Subdivision in Parañaque City. Yu headed the assault team while Marlon Sapla headed the perimeter defense. After the police team apprehended eight men inside the safe house, it turned them over to their investigating unit. The following day, Yu just learned that the men and three others were killed in a shoot-out with the police in Commonwealth Avenue in Quezon City.

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[13] *AAA v. Carbonell*, supra note 10, at 508-509; *De Joya v. Judge Marquez*, 516 Phil. 717, 722 (2006).
[14] *Rollo*, Vol. I, pp. 235-251.
[15] Id. at 600-601.

2. P/S Insp. Abelardo Ramos' affidavit of March 24, 2001[16] in which he said that he was part of the perimeter defense during the Superville operation. After the assault team apprehended eight male suspects, it brought them to Camp Crame in two vans. Ramos then went to the office of respondent Zubia, TMC Head, where he saw respondents Lacson, Acop, Laureles, Villacorte and other police officers.

According to Ramos, Zubia said that the eight suspects were to be brought to Commonwealth Avenue and killed in a supposed shoot-out and that this action had been cleared with higher authorities, to which remark Lacson nodded as a sign of approval. Before Ramos left the meeting, Lacson supposedly told him, "*baka may mabuhay pa diyan*." Ramos then boarded an L-300 van with his men and four male suspects. In the early morning of May 18, 1995, they executed the plan and gunned down the suspects. A few minutes later, P/S Insp. Glenn G. Dumlao and his men arrived and claimed responsibility for the incident.

3. SPO1 Wilmor B. Medes' affidavit of April 24, 2001[17] in which he corroborated Ramos' statements. Medes said that he belonged to the same team that arrested the eight male suspects. He drove the L-300 van in going to Commonwealth Avenue where the suspects were killed.

4. Mario C. Enad's affidavit of August 8, 1995[18] in which he claimed having served as TMC civilian agent. At around noon of May 17, 1995, he went to Superville Subdivision together with respondents Dumlao, Tannagan, and Nuas. Dumlao told Enad to stay in the car and observe what went on in the house under surveillance. Later that night, other police

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[16] Id. at 632-634.
[17] Id. at 665-666.
[18] Id. at 667-675.

officers arrived and apprehended the men in the house. Enad went in and saw six men lying on the floor while the others were handcuffed. Enad and his companions left Sucat in the early morning of May 18, 1995. He fell asleep along the way but was awaken by gunshots. He saw Dumlao and other police officers fire their guns at the L-300 van containing the apprehended suspects.

5. SPO2 Noel P. Seno's affidavit of May 31, 2001[19] in which he corroborated what Ramos said. Seno claimed that he was part of the advance party in Superville Subdivision and was also in Commonwealth Avenue when the suspected members of the *Kuratong Baleleng* Gang were killed.

6. The PNP ABRITG After Operations Report of May 31, 1995[20] which narrated the events that took place on May 17 and 18, 1995. This report was submitted by Lacson, Zubia, Acop and Canson.

7. The PNP Medico-Legal Reports[21] which stated that the suspected members of the *Kuratong Baleleng* Gang tested negative for gunpowder nitrates.

The Court agrees with Judge Yadao that the above affidavits and reports, taken together with the other documents of record, fail to establish probable cause against the respondents.

First. Evidently, the case against respondents rests on the testimony of Ramos, corroborated by those of Medes, Enad, and Seno, who supposedly heard the commanders of the various units plan the killing of the *Kuratong*

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[19] Id. at 676-680.
[20] Id. at 624-631.
[21] Id. at 618-622; Vol. II, pp. 685-706.

Baleleng Gang members somewhere in Commonwealth Avenue in Quezon City and actually execute such plan. Yu's testimony is limited to the capture of the gang members and goes no further. He did not see them killed.

Second. Respecting the testimonies of Ramos, Medes, Enad, and Seno, the prosecution's own evidence—the PNP ABRITG's After Operations Report of May 31, 1995—shows that these men took no part in the operations against the *Kuratong Baleleng* Gang members. The report included a comprehensive list of police personnel from Task Force Habagat (Lacson), Traffic Management Command (Zubia), Criminal Investigation Command (Acop), and National Capital Region Command (Canson) who were involved. The names of Ramos, Medes, Enad, and Seno were not on that list. Notably, only Yu's name, among the new set of witnesses, was on that list. Since an after-battle report usually serves as basis for commendations and promotions, any omitted name would hardly have gone unchallenged.

Third. Ramos, whose story appeared to be the most significant evidence against the respondents, submitted in the course of the preliminary investigation that the Office of the Ombudsman conducted in a related robbery charge against the police officers involved a counter-affidavit. He claimed in that counter-affidavit that he was neither in Superville Subdivision nor Commonwealth Avenue during the *Kuratong Baleleng* operations since he was in Bulacan on May 17, 1995 and at his home on May 18.[22] Notably, Medes claimed in a joint counter-affidavit that he was on duty at the TMC headquarters at Camp Crame on May 17 and 18.[23]

Fourth. The Office of the Ombudsman, looking at the whole picture and giving credence to Ramos and Medes' statements, dismissed the robbery

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[22] Id., Vol. III, pp. 2076-2078.
[23] Id. at 2081-2082.

case. More, it excluded Ramos from the group of officers that it charged with the murder of the suspected members of the *Kuratong Baleleng* Gang. Under the circumstances, the Court cannot be less skeptical than Judge Yadao was in doubting the sudden reversal after six years of testimony of these witnesses.

Of course, Yu may have taken part in the subject operation but, as he narrated, his role was limited to cornering and arresting the suspected *Kuratong Baleleng* Gang members at their safe house in Superville Subdivision. After his team turned the suspects over to an investigating unit, he no longer knew what happened to them.

Fifth. True, the PNP Medico-Legal Reports showed that the *Kuratong Baleleng* Gang members tested negative for gunpowder nitrates. But this finding cannot have any legal significance for the purpose of the preliminary investigation of the murder cases against the respondents absent sufficient proof that they probably took part in gunning those gang members down.

The prosecution points out that, rather than dismiss the criminal action outright, Judge Yadao should have ordered the panel of prosecutors to present additional evidence pursuant to Section 6, Rule 112 of the Rules of Court which provides:

> Sec. 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.

Section 6, Rule 112 of the Rules of Court gives the trial court three options upon the filing of the criminal information: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; and (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.[24]

But the option to order the prosecutor to present additional evidence is not mandatory. The court's first option under the above is for it to "immediately dismiss the case if the evidence on record clearly fails to establish probable cause." That is the situation here: the evidence on record clearly fails to establish probable cause against the respondents.

It is only "in case of doubt on the existence of probable cause" that the judge may order the prosecutor to present additional evidence within five days from notice. But that is not the case here. Discounting the affidavits of Ramos, Medes, Enad, and Seno, nothing is left in the record that presents some doubtful probability that respondents committed the crime charged. PNP Director Leandro Mendoza sought the revival of the cases in 2001, six years after it happened. It would have been ridiculous to entertain the belief that the police could produce new witnesses in the five days required of the prosecution by the rules.

In the absence of probable cause to indict respondents for the crime of multiple murder, they should be insulated from the tribulations, expenses and anxiety of a public trial.[25]

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[24] *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 197.
[25] *Santos v. Orda, Jr.*, supra note 8, at 386-387.

5. Policies Adopted for Conduct of Court Hearing

The prosecution claims that Judge Yadao arbitrarily recognized only one public prosecutor and one private prosecutor for all the offended parties but allowed each of the counsels representing the individual respondents to be heard during the proceedings before it. She also unjustifiably prohibited the prosecution's use of tape recorders.

But Section 5, Rule 135 of the Rules of Court gives the trial court ample inherent and administrative powers to effectively control the conduct of its proceedings. Thus:

> Sec. 5. *Inherent powers of court*. — Every court shall have power:
>
> x x x x
>
> (b) To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;
>
> x x x x
>
> (d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;
>
> x x x x
>
> (g) To amend and control its process and orders so as to make them conformable to law and justice;
>
> x x x x

There is nothing arbitrary about Judge Yadao's policy of allowing only one public prosecutor and one private prosecutor to address the court during the hearing for determination of probable cause but permitting counsels representing the individual accused to do so. A criminal action is prosecuted under the direction and control of the public prosecutor.[26] The

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[26] *Mobilia Products, Inc. v. Umezawa,* 493 Phil. 85, 106 (2005).

burden of establishing probable cause against all the accused is upon him, not upon the private prosecutors whose interests lie solely in their clients' damages claim. Besides, the public and the private prosecutors take a common position on the issue of probable cause. On the other hand, each of the accused is entitled to adopt defenses that are personal to him.

As for the prohibition against the prosecution's private recording of the proceedings, courts usually disallows such recordings because they create an unnecessary distraction and if allowed, could prompt every lawyer, party, witness, or reporter having some interest in the proceeding to insist on being given the same privilege. Since the prosecution makes no claim that the official recording of the proceedings by the court's stenographer has been insufficient, the Court finds no grave abuse of discretion in Judge Yadao's policy against such extraneous recordings.

WHEREFORE, the Court **DISMISSES** this petition and **AFFIRMS** the following assailed Orders of the Regional Trial Court of Quezon City, Branch 81 in Criminal Cases 01-101102 to 12:

1. the Order dated November 12, 2003 which denied the prayer for re-raffle, granted the motions for determination of probable cause, and dismissed the criminal cases;

2. the Order dated January 16, 2004 which granted the motion of the respondents for the immediate resolution of the three pending incidents before the court;

3. the Order dated January 21, 2004 which denied the motion to recuse and the urgent supplemental motion for compulsory disqualification;

4. the Order dated January 22, 2004 which denied the motion for reconsideration of the Order dated November 12, 2003; and

5. the Order dated January 26, 2004 which denied the motion for reconsideration of the January 16, 2004 Order.

SO ORDERED.

ROBERTO A. ABAD
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice