



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

GERRY A. SALAPUDDIN,
Petitioner,

G.R. No. 184681

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

THE COURT OF APPEALS,
GOV. JUM AKBAR, and
NOR-RHAMA J. INDANAN,
Respondents.

Promulgated:

February 25, 2013

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RESOLUTION

VELASCO, JR., J.:

The instant petition assails the Decision¹ and Resolution² dated August 6, 2008 and October 16, 2008, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 103461, which affirmed the inclusion of petitioner Gerry A. Salapuddin (Salapuddin) in the amended information for multiple murder and multiple frustrated murder filed in Criminal Case No. Q-07-149982 of the Regional Trial Court (RTC), Branch 83 in Quezon City.

The present controversy started on November 13, 2007 when, shortly after the adjournment of the day's session in Congress, a bomb exploded near the entrance of the South Wing lobby of the House of Representatives (HOR) in the *Batasan* Complex, Quezon City. The blast led to the death of Representative Wahab Akbar (Congressman Akbar),³ Marcial Taldo,⁴ Jul-Asiri Hayudini,⁵ Maan Gale Bustaliño⁶ and Dennis Manila,⁷ and the

¹ *Rollo*, pp. 61-85. Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Noel G. Tijam and Arturo R. Tayag.

² *Id.* at 87-93.

³ *Id.* at 781-782.

⁴ *Id.* at 785.

⁵ *Id.* at 501-503.

⁶ *Id.* at 498-500.

⁷ *Id.* at 632-633.

inflicting of serious injuries on Representatives Henry Teves⁸ and Luzviminda Ilagan,⁹ Ismael Lim, Vercita Garcia,¹⁰ Kumhar Indanan,¹¹ Larry Noda¹² and Paula Dunga.

The post-blast investigation revealed that the explosion was caused by an improvised bomb planted on a motorcycle that was parked near the entrance stairs of the South Wing lobby.¹³

Acting on a confidential information that the person who parked the motorcycle near the South Wing lobby of the HOR was staying with members of the Abu Sayyaf Group (ASG) and learning that one ASG member, Abu Jandal *alias* “Bong,” has standing warrants of arrest for kidnapping and serious illegal detention,¹⁴ police officers raided an alleged ASG safehouse located at Blk. 4, Lot 23, Anahaw St., Parkwood Hills, Payatas, Quezon City (Parkwood) on November 15, 2007. During the course of the operation, a firefight ensued killing three persons: Bong, Redwan Indama (Redwan) and Saing Indama.¹⁵ Meanwhile, Caidar Aunal (Aunal), Ikram Indama (Ikram) and Adham Kusain (Kusain)¹⁶ were arrested and then brought to Camp Crame in Quezon City. Several items were likewise seized from the premises, including two (2) Cal. 45 pistols, one motor vehicle plate number “8,” an I.D. of HOR issued to Ikram, and a black wallet with a GSIS ID card issued to Aunal with calling cards of Salapuddin.¹⁷ One of the Cal. 45 pistols found was traced back to Julham S. Kunam, Political Affairs Assistant of Salapuddin.¹⁸

On November 16, 2007, a day after the raid, Kusain executed a *Sinumpaang Salaysay*. In it, he stated that he is from Tipo-Tipo, Basilan and came to Manila in March 2005, staying when he first arrived in Manila in the house of Salapuddin, his father’s friend. Salapuddin paid for one year of his college education and helped him be employed as a building attendant at the Ninoy Aquino International Airport. He explained that he was in the house at Parkwood Hills because Redwan asked him to get the payment for his black XRM Honda motorcycle that Redwan took from his house on November 2, 2007. He claimed that Redwan did not disclose the purpose for which the motorcycle will be used and it was only after the raid that he

⁸ Id. at 506.

⁹ Id. at 504-505.

¹⁰ Id. at 509.

¹¹ Id. at 510.

¹² Id. at 508.

¹³ Id. at 482, Final Investigation Report dated November 21, 2007.

¹⁴ Issued by Judge Danilo M. Bucay of the Regional Trial Court of Basilan, Branch 2, 9th Judicial Region at Isabela, Basilan.

¹⁵ *Rollo*, p. 94, Affidavit of Arrest dated November 15, 2007.

¹⁶ Id. at 492.

¹⁷ Id. at 95-96, Affidavit of Arrest dated November 15, 2007.

¹⁸ Id. at 493-497.

learned that his motorcycle was the very same motorcycle used during the bombing at the *Batasan Complex*.¹⁹

On the same day, November 16, 2007, Ikram executed the first of his several affidavits (*Ikram's first affidavit*). He stated that he is a driver working for Salapuddin since July 2002 and was staying in a house at 48-A Greenbucks, Filinvest St., Batasan Hills, Quezon City (Greenbucks), owned by Salapuddin, from June 2004 until he went home to Isabela City, Basilan in June 2007.²⁰ He maintained that he returned to Manila on October 16, 2007. He stressed that before returning to Manila, or on October 9, 2007, his cousin Redwan talked to him about a mission to kill Congressman Akbar of Basilan by means of a bomb to be planted on a motorcycle. **He was not, however, informed of the reason for the mission or the identity of the person who gave the order.** He stated that upon arrival in Manila, he stayed at Greenbucks where the bombing was planned. He stated that those who took part in the planning of the bombing included: Redwan and his wife Saing; Jang, who was a cousin and member of the staff of Congressman Mujiv Hataman; Bong, who made the bomb; Aunal; and Kusain. On October 20, 2007, he and Aunal went home to Basilan and returned to Manila only on November 5, 2007. He also admitted bringing the motorcycle with the bomb to the HOR.²¹ He narrated that at 3:30 p.m. of November 13, 2007, he went to the *Batasan* premises on board a black Honda XRM with the bomb and parked it near the entrance of the South Wing lobby, at a spot reserved by Jang.²² Later that day, he heard the bomb explode and received a text message from Jang confirming that it was the bomb he brought that exploded. He explained that it was Jang who set off the bomb by calling the cellphone attached to the bomb inside the motorcycle.²³

Jilbert C. Ortega, Chief of the Complaint and Investigation Unit of the HOR, likewise executed an affidavit on the same day, November 16, 2007, stating that in the morning of November 13, 2007, he noticed two men near the South Wing lobby of the HOR roaming around and seemingly surveying the premises. He identified Ikram as one of the two.²⁴

On the basis of the sworn statements, a request for the conduct of inquest proceedings relative to the participation or involvement of Aunal, Ikram, Kusain, and Jang was made.²⁵

¹⁹ Id. at 97-102. *Sinumpaang Salaysay ni Adham Kusain y Jallaman* dated November 16, 2007.

²⁰ Id. at 104.

²¹ Id. at 105.

²² Id. at 106.

²³ Id. at 107.

²⁴ Id. at 845.

²⁵ Id. at 775-780.

On November 17, 2007, Salapuddin went to Camp Crame and voluntarily gave a sworn statement denying any knowledge of the *Batasan* bombing, asserting that his name was being used by the media only because of his relationship with the persons arrested in connection with the incident: Ikram was his former driver;²⁶ Aunal, his former brother-in-law, being a brother of his ex-wife whom he divorced under Muslim laws; and Kusain who once sought his assistance for employment. He clarified that he knew Redwan and Saing Indama only because they were members of the Moro National Liberation Front but denied knowing Bong. He stated that the individuals thus mentioned rarely visited him, and before the incident, he spoke only to Ikram, who was then working in his water refilling station in Basilan, when the latter asked permission to leave for Manila to look for better employment.²⁷ He explained that his house at Greenbucks is usually used by his constituents, including Kusain and Ikram, as a temporary residence or shelter whenever they are in Manila.²⁸

As the police investigation prospered, Ikram executed several supplemental affidavits augmenting the statement he previously gave to the authorities. At 8:00 in the morning of November 18, 2007, Ikram narrated in his first supplemental affidavit²⁹ (*Ikram's second affidavit*) that he, together with Aunal, Redwan, and Bong, planned the *Batasan* bombing on the night of October 17, 2007 at Greenbucks. On October 19, 2008, they all proceeded to Raon, Quiapo to shop for materials to make the bomb.³⁰ He added that on October 25, 2007, he and Aunal went home to Basilan and returned to Greenbucks in Manila only on November 5, 2007. Bong made the bomb and placed it inside the toolbox of a Honda motorcycle in Greenbucks.³¹ The following day, they all transferred to Parkwood bringing the motorcycle with them.³² It was in Parkwood where they completed the plan to kill Congressman Akbar.³³

At 6:00 in the evening of the same day, November 18, 2007, Ikram executed another supplemental affidavit (*Ikram's third affidavit*).³⁴ There he stated that on October 13, 2007, when they were about to leave for Manila, he, Bong, Redwan and Aunal passed by Gersal Hardware owned by Salapuddin in Zamboanga City³⁵ upon the prodding of one Bayan Judda, who handed them a bag. Redwan later informed him that the bag contained ingredients for explosives. They brought the bag with them to Greenbucks in Manila.³⁶ On October 17, 2007, he, along with Bong, Redwan and Aunal,

²⁶ Id. at 109.

²⁷ Id. at 110.

²⁸ Id. at 111.

²⁹ Id. at 112-115.

³⁰ Id. at 114.

³¹ Id. at 114-115.

³² Id. at 114.

³³ Id. at 115.

³⁴ Id. at 116-120.

³⁵ Id. at 648.

³⁶ Id. at 118.

went to Quiapo to buy the wires needed to make a bomb.³⁷ Thereafter, Bong made two bombs to be used in killing Congressman Akbar: one intended for the HOR premises and another for either his Valle Verde house or his condo unit in Ortigas. On October 22, 2007, Hajarun Jamiri (Jamiri), the ex-mayor of Tuburan, Basilan arrived at Greenbucks on board a black Suzuki motorcycle where the bomb intended for the Valle Verde house or the Ortigas condo will be placed. After Bong placed the bomb in his motorcycle, Jamiri left on board the same motorcycle.³⁸ On November 10, 2007, Ikram went to Jamiri's apartment in Malate, Manila to get money. During the said occasion, he saw the Suzuki motorcycle with the bomb parked inside Jamiri's apartment.³⁹

Notably, **Ikram, in his first three affidavits, never mentioned Salapuddin's involvement, let alone implicate him, in the plan to kill Congressman Akbar. Ikram's narration of events altogether changed in his third supplemental affidavit dated November 20, 2007 (*Ikram's fourth affidavit*).**⁴⁰ There, Ikram alleged that, after receiving his last salary from the HOR, he worked for Salapuddin's water refilling station in Isabela City as a delivery boy. In September 2007, before the Ramadan, Salapuddin asked him to fetch Redwan.⁴¹ Ikram complied and brought Redwan to Salapuddin's house on the same day.⁴² He claimed that he was beside Redwan when Salapuddin ordered: "*Pateyun si Cong. Wahab Akbar.*"⁴³ Ikram saw Redwan again on October 9, 2007 when the latter told him about the mission in Manila to kill Congressman Akbar.⁴⁴ Ikram further narrated in his fourth affidavit that on October 13, 2007, he, Bong, Redwan and Aunal left Isabela City for Manila. In Manila, they stayed at Greenbucks owned by Salapuddin. Ikram also alleged in his affidavit that in the third week of October 2007, he and Redwan met with Hadjiman Hataman-Salliman (Jim Hataman) in a Figaro Coffee House in Ever Gotesco, Commonwealth Avenue, Quezon City (Figaro Café). During the said occasion, Ikram heard Jim Hataman tell Redwan of the plan to kill Congressman Akbar using a bomb. A week later, Redwan brought Ikram to the house of Congressman Mujiv Hataman (Congressman Hataman) in Filinvest II, Batasan Hills where Ikram heard Congressman Hataman order Redwan to kill Congressman Akbar. Ikram explained that Redwan was a cousin of the Hatamans.⁴⁵

³⁷ Id. at 118.

³⁸ Id. at 119.

³⁹ Id. at 120.

⁴⁰ Id. at 121-130. The contents of this affidavit are similar, if not the same, to a handwritten affidavit executed by Ikram Indama (id. at 534-535).

⁴¹ Id. at 123.

⁴² Id. at 124.

⁴³ Id. at 125.

⁴⁴ Id. at 125.

⁴⁵ Id. at 128.

Ikram would later amend the dates mentioned in his earlier affidavits by executing an affidavit dated January 10, 2008⁴⁶ (*Ikram's fifth affidavit*), where he made it appear that after bringing Redwan to Salapuddin's house in Basilan, he and Redwan again saw each other on the night of September 5, 2007, not October 9, 2007.⁴⁷ He declared, however, that Redwan talked to him about a mission to kill Congressman Akbar only on September 8, 2007,⁴⁸ which was also the date that they started for Manila⁴⁹ and dropped by Salapuddin's Gersal Hardware, not October 13, 2007.⁵⁰ He added that they returned to Manila on September 11, 2007, not on October 16, 2007.⁵¹ **He declared that Bong made the bomb at Greenbucks on September 13, 2007, not October 18, 2007.⁵² Inconsistently, however, he stated in the same affidavit that he, together with Aunal, Redwan and Bong, planned the Batasan bombing only on the night of September 17, 2007 at Greenbucks,⁵³ then shopped in Raon for materials to make the bomb only on September 19, 2007.⁵⁴ On September 17, 2007, not October 22, 2007, Jamiri supposedly went to Greenbucks to have his motorcycle fitted with a bomb.⁵⁵ Ikram also stated that he last saw Congressman Hataman in September 2007, not October 2007.⁵⁶ He further declared that he and Aunal returned to Basilan on October 14, 2007, not October 20, 2007.⁵⁷**

Incongruously, however, Joel Maturan, the mayor of Ungkaya Pukan, Basilan, stated in his affidavit that he saw Ikram driving Salapuddin's mini-truck in Lamitan, Basilan on September 20, 2007 and delivering water from Salapuddin's water refilling station.⁵⁸

On November 19, 2007, Jamiri was apprehended for illegal possession of firearm. The following day, or on November 20, 2007, he executed an affidavit where he narrated that during Ramadan, in the month of October,⁵⁹ he brought a Suzuki motorcycle to Greenbucks on the instruction of Redwan. The latter requested Jamiri to leave the motorcycle behind so that he could place a bomb inside it. Jamiri returned the following day and was given instructions on how to remove the bomb from the motorcycle.⁶⁰ In exchange for keeping the bomb, Redwan gave Jamiri PhP 50,000 with the promise of an additional PhP 500,000 should the bomb be actually used to kill Congressman Akbar when he dines at Sulo Hotel.⁶¹

⁴⁶ Id. at 474-477.

⁴⁷ Id. at 125, 476, 535.

⁴⁸ Id. at 474.

⁴⁹ Id. at 125, 476, 535.

⁵⁰ Id. at 118, 475.

⁵¹ Id. at 105, 118, 474-475.

⁵² Id. at 119, 475.

⁵³ Id. at 114, 475.

⁵⁴ Id. at 114, 475.

⁵⁵ Id. at 119, 475.

⁵⁶ Id. at 127, 476.

⁵⁷ Id. at 105, 114, 474-475.

⁵⁸ Id. at 563.

⁵⁹ Id. at 533.

⁶⁰ Id. at 956.

⁶¹ Id. at 956-957.

However, the bomb was never used as Jamiri failed to bring the motorcycle to the hotel on October 23, 2007.⁶² He admitted hiding the bomb in a house located at Leveriza Street, Pasay City and expressed his willingness to surrender it to the police.⁶³ Pursuant to the undertaking he made in his affidavit, Jamiri accompanied and guided police authorities in retrieving an improvised explosive device at an apartelle located in Leveriza St., Malate, Manila on the same day he executed his affidavit.⁶⁴

In a supplemental affidavit,⁶⁵ Jamiri added that during the last week of October 2007, Redwan called him from Figaro Café, in Ever Gotesco, Commonwealth Avenue, Quezon City and asked him to go to the same place. When he arrived at the café, Jamiri saw Redwan with Congressman Hataman and his brother Jim Hataman. Congressman Hataman then asked Jamiri to help Redwan in his “project” to kill Congressman Akbar.⁶⁶ Jim Hataman thereafter interposed that the death of Congressman Akbar will bring peace to Basilan.⁶⁷

On November 22, 2007, Aunal executed his own affidavit⁶⁸ where he stated that he left Isabela City, Basilan for Manila on October 13, 2007 with Ikram, Redwan and Bong.⁶⁹ They arrived in Manila on October 16, 2007 and proceeded to stay at Greenbucks.⁷⁰ He recalled watching Bong assemble the two improvised bombs. He stated that when he asked about who their target was, Bong answered that it was Congressman Akbar. He explained that it had something to do with the politics in Basilan. Aunal likewise declared that Bong told him that the order to kill Congressman Akbar was made by Jim Hataman who vied for the congressional seat won by Congressman Akbar.⁷¹ Aunal himself heard Jim Hataman order Redwan to kill Congressman Akbar one evening in October 2007 when they were in Figaro Café.⁷² He and Ikram then went back to Basilan during the last week of October and came back to Manila in the first week of November.⁷³ On November 13, 2007, Ikram brought one of the improvised bombs, hidden inside a motorcycle, to the *Batasan* premises where Jang detonated it, killing Congressman Akbar.⁷⁴

⁶² Id. at 957.

⁶³ Id. at 958.

⁶⁴ Id. at 894.

⁶⁵ Id. at 531-533, 536-538, *Karagdagang Sinumpaang Salaysay* dated November 23, 2007.

⁶⁶ Id. at 536.

⁶⁷ Id. at 537.

⁶⁸ Id. at 545-551.

⁶⁹ Id. at 547.

⁷⁰ Id. at 548.

⁷¹ Id. at 549.

⁷² Id. at 551.

⁷³ Id. at 549.

⁷⁴ Id. at 550.

Based on the affidavits of Jamiri, Ikram, and Aunal, Police Superintendent Asher Dolina indorsed a letter dated November 29, 2007 to then Chief State Prosecutor Zuño requesting the inclusion of Salapuddin, Congressman Hataman, Jim Hataman and Police Officer 1 (PO1) Bayan Judda in the complaints for murder and multiple frustrated murder.⁷⁵ After conducting preliminary investigation, the Chief State Prosecutor approved a Resolution dated December 6, 2007 where he: (1) found probable cause to indict Aunal, Ikram, and Kusain for multiple murder and violation of Presidential Decree No. 1829; (2) recommended the conduct of further investigation for their indictment for multiple frustrated murder; and (3) recommended the conduct of preliminary investigation as to the other respondents who were not under detention.⁷⁶

In the meantime, upon the request of the relatives and counsel of the accused, Dr. Benito Molino (Dr. Molino)⁷⁷ conducted in the presence of investigators from the Commission on Human Rights a medical examination of the detained on December 1, 4, and 7, 2007. The results: Kusain, Aunal and Jamiri were subjected to physical and mental torture.⁷⁸ In particular, Dr. Molino found that “the injuries found on the skin and private parts of Mr. Jamiri two weeks after his claimed ordeal that he received countless blows all over his body in spite of being sick with diabetes, hit by a blunt object on his head and his shins and that electric current was applied to his private parts while being interrogated as to his knowledge and participation in the Batasan bombing x x x are consistent. In his case, the three elements of torture are present.”⁷⁹ Similarly, he found that both Aunal and Kusain “underwent severe physical injuries and subjected to deep emotional stress x x x intentionally inflicted by men believed to be officers of the CIDG [Criminal Investigation and Detection Group] x x x to get information from [them].”⁸⁰

On December 10, 2007, Jamiri executed an affidavit withdrawing and disavowing the statements he made in his previous affidavits.⁸¹ He alleged that he was not carrying any weapon, much less an explosive, when arrested. He was merely walking when six men suddenly arrested him, forced him to a van, and blindfolded him.⁸² He was thereafter tortured and forced to sign an affidavit on November 20, 2007, not knowing its contents.⁸³ On the same day, he was forcibly brought to an apartment in Leveriza Street, Manila where the police found a bomb. He was thereafter forced to admit that it was

⁷⁵ Id. at 478-481.

⁷⁶ Id. at 849-862.

⁷⁷ The author of the chapters “Understanding Torture” and “Medical and Professional’s Duties and Responsibilities against Torture” in the “Manual on Recognition, Documentation and Reporting of Torture,” a 2005 publication of the Commission on Human Rights and Medical Action Group, Inc.

⁷⁸ *Rollo*, pp. 136-179.

⁷⁹ Id. at 171-172.

⁸⁰ Id. at 144, 154.

⁸¹ Id. at 726-731.

⁸² Id. at 726, 730.

⁸³ Id. at 727.

he who placed the bomb in the apartment.⁸⁴ He was again prevailed upon by Mayor Tahira Ismael of Sumisip, Basilan to sign another affidavit when the latter told him that the Hatamans and Salapuddin were out to kill his wife and children.⁸⁵ He claimed that the contents of the affidavits he was forced to sign were all fabricated by the police.⁸⁶

On December 12, 2007, Kusain and Aunal executed their respective affidavits of recantation.⁸⁷ Both stated that they were coerced to sign their confessions after they were subjected to physical and psychological torture. They were also assisted by counsels not of their choice but endorsed by the Philippine National Police-CIDG.⁸⁸

On January 3, 2008, Salapuddin submitted his counter-affidavit where he reiterated the statements he made in his November 17, 2007 affidavit and assailed Ikram's attempt to implicate him as Ikram's desperate act of self-redemption after owning up to the crime.⁸⁹

Nevertheless, on February 22, 2008, Prosecutor Zuño approved the Department of Justice (DOJ) Investigating Panel's Supplemental Resolution. The Resolution recommended the amendment of the Information in Criminal Case No. Q-07-149982, pending before Quezon City RTC, Branch 83, to include respondents Ikram, Aunal, Kusain, Jamiri, PO1 Bayan Judda, Jang Hataman and Salapuddin.⁹⁰ Referring to Salapuddin in particular, the DOJ Investigating Panel stated the observation that: "Salapuddin's participation in the [crime] cannot be downplayed just because he did not actively take part in the planning. Rather, despite this, it has his hands written all over it. The circumstances, the people and place used are all, [in] one way or another, associated with him. It cannot be mere coincidence."⁹¹ On the other hand, the resolution dismissed the charge as against Julham Kunam, Congressman Hataman, and Jim Hataman. So the DOJ Investigating Panel found, "their participation as conspirators in the grand scheme is unstable x x x apart from the statements implicating respondents Mujiv Hataman and Hadjiman Hataman-Salliman, no other evidence was presented to sufficiently establish their involvement in the crime."⁹²

On March 7, 2008, Salapuddin filed a Petition for Review of the Supplemental Resolution with the Office of the Secretary of Justice.⁹³ The Investigating Panel, Salapuddin rued, refused to give probative weight to the

⁸⁴ Id. at 730.

⁸⁵ Id. at 729.

⁸⁶ Id. at 730-731.

⁸⁷ Id. at 600-606.

⁸⁸ Id. at 601, 604. They supplemented these affidavits of recantation by a *Pinagsamang "Supplement" sa Salaysay* dated January 4, 2008, id. at 607-608.

⁸⁹ Id. at 570-586.

⁹⁰ Id. at 216-236, 1104-1105.

⁹¹ Id. at 232.

⁹² Id. at 233.

⁹³ Id. at 388-416.

incriminating statements of Ikram with respect to the Hataman brothers, but relied on the very same statements in finding probable cause to indict him. Moreover, he maintained that there is no evidence independent of Ikram's statements that will support the finding of probable cause to indict him for murder and multiple frustrated murder.

On April 23, 2008, the Secretary of Justice issued a Resolution excluding Salapuddin from the Information for the complex crime of murder and frustrated murder, thus modifying the Supplemental Resolution of the Investigating Panel.⁹⁴ The Secretary of Justice predicated his modificatory action on the interplay of the following premises: the only material evidence against Salapuddin is the statements of Ikram.⁹⁵ However, Ikram's statements are laden with irreconcilable inconsistencies and contradictions that they cannot be considered worthy of belief.⁹⁶ What is more, the Secretary added, "there is nothing on record that will indicate that x x x Salapuddin performed the overt acts of the offense charged."⁹⁷ The Secretary of Justice observed that the statements of the other accused cannot be given weight as they were obtained through force and intimidation contrary to the Constitution and were in fact later recanted.

In a Petition for Certiorari dated May 13, 2008, herein respondents Jum Akbar and Nor-Rhama Indanan questioned the Secretary of Justice's Resolution⁹⁸ before the CA, the recourse docketed as CA-G.R. SP No. 103461. They argued in the main that matters relating to the admissibility of evidence and credibility of witnesses are best determined by the courts during trial, and not at the stage of determining probable cause. There is, so respondents claimed, overwhelming evidence to link Salapuddin in the conspiracy to kill Congressman Akbar.

The appellate court, by its Decision dated August 6, 2008, set aside the Resolution of the Secretary of Justice. As held, the totality of the evidence "sufficiently indicates the probability that Salapuddin lent moral and material support or assistance to the perpetrators in the commission of the crime,"⁹⁹ the CA adding in this regard that "the absence (or presence) of any conspiracy among the accused is evidentiary in nature after a full-blown trial on the merits."¹⁰⁰ And to the CA, the recantation made by Jamiri, Aunal, and Kusain and their claim of torture were of little probative value inasmuch as these were "unsupported by competent proof."¹⁰¹

⁹⁴ Id. at 266-283.

⁹⁵ Id. at 267.

⁹⁶ Id. at 271.

⁹⁷ Id. at 280.

⁹⁸ Id. at 284-307.

⁹⁹ Id. at 83.

¹⁰⁰ Id. at 84.

¹⁰¹ Id. at 82.

Salapuddin moved for, but was denied, reconsideration per the CA's Resolution dated October 16, 2008.¹⁰²

In the meantime, Ikram filed a *Sinumpaang Salaysay ng Pagbabawi, Pagwalang Bisa ng Naunang Mga Salaysay at Pagpapatotoo* dated October 6, 2008¹⁰³ with the Quezon City RTC-Branch 83 claiming that he was forced to sign the affidavits he previously executed and was merely forced to implicate Salapuddin and the Hataman brothers in the alleged conspiracy by respondent Gov. Jum Akbar and several mayors from Basilan because of their political rivalry in the province.¹⁰⁴ On November 11, 2008, Ikram submitted another affidavit of recantation supplying details of his ordeal while under custodial investigation and alleging that he was physically and mentally tortured so that he was forced to write and sign statements regarding the *Batasan* bombing that were in fact supplied by the police officers themselves.¹⁰⁵

On November 24, 2008, Salapuddin filed a Petition for Review before this Court, ascribing on the appellate court the commission of grave error in admitting the extrajudicial admissions of Jamiri, Kusain, and Aunal obtained as they were through torture and physical abuse, without the effective assistance of a competent independent counsel of their choice, and were in fact recanted. The appellate court also grievously erred, so Salapuddin argued, in according full probative value to Ikram's extrajudicial confession implicating Salapuddin even if it was riddled with serious contradictions and inconsistencies.

The Court, in a minute resolution, denied the petition on September 29, 2010. Hence, on December 1, 2010, Salapuddin filed a Motion for Reconsideration¹⁰⁶ specifically inviting attention to the prosecution's admission no less that there is no other direct evidence linking him to the crime charged except Ikram's testimony.¹⁰⁷ Since, as urged, Ikram has recanted his testimony on account of the violations of his constitutionally protected rights, there is no longer any reason or probable cause to maintain the criminal case filed against Salapuddin.

To the motion, respondents interposed an Opposition dated December 17, 2010¹⁰⁸ stating that Salapuddin has not provided this Court any new and substantial matter that would show the serious error attributed to the CA; that the allegations of torture and recantation have already been denied by the investigating prosecutors and should not sway this Court to reverse the

¹⁰² Id. at 88.

¹⁰³ Id. at 1016-1019.

¹⁰⁴ Id. at 1017.

¹⁰⁵ Id. at 1020-1027.

¹⁰⁶ Id. at 1119-1134.

¹⁰⁷ Id. at 1130.

¹⁰⁸ Id. at 1144-1153.

Decision of the appellate court;¹⁰⁹ and that Salapuddin's evasion from arrest is evidence of his guilt.¹¹⁰

In a Resolution dated November 21, 2012, the Court granted the Motion for Reconsideration filed by petitioner and reinstated the petition.

Upon a second hard look and thorough reexamination of the records, the Court finds merit in the instant petition.

The determination of probable cause is, under our criminal justice system, an executive function that the courts cannot interfere with in the absence of grave abuse of discretion.¹¹¹ Otherwise, a violation of the basic principle of separation of powers will ensue. The Executive Branch, through its prosecutors, is, thus, given ample latitude to determine the propriety of filing a criminal charge against a person. In the landmark *Crespo v. Mogul*,¹¹² We ruled, thus:

It is a cardinal principle that all criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal. **The institution of a criminal action depends upon the sound discretion of the fiscal.** He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence, in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. **The reason for placing the criminal prosecution under the direction and control of the fiscal is to prevent malicious or unfounded prosecutions by private persons** x x x. Prosecuting officers under the power vested in them by the law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. **They have equally the duty not to prosecute when the evidence adduced is not sufficient to establish a *prima facie* case.** (Emphasis supplied.)

This broad authority of prosecutors, however, is circumscribed by the requirement of a conscientious conduct of a preliminary investigation for offenses where the penalty prescribed by law is at least 4 years, 2 months and 1 day.¹¹³ This rule is intended to guarantee the right of every person to be free from "the inconvenience, expense, ignominy and stress of defending himself/herself in the course of a formal trial, until the reasonable probability of his or her guilt has been passed upon"¹¹⁴ and to guard the State against the "burden of unnecessary expense and effort in prosecuting alleged

¹⁰⁹ Id. at 1143-1151.

¹¹⁰ Id. at 1151.

¹¹¹ *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177; *Ilusorio v. Ilusorio*, G.R. No. 171659, December 13, 2007, 540 SCRA 182, 189-190; *Dupasquier v. Court of Appeals*, G.R. No. 112737, January 24, 2001, 350 SCRA 146.

¹¹² No. L-53373, June 30, 1987, 151 SCRA 462, 467-468.

¹¹³ RULES OF COURT, Rule 112, Sec. 1.

¹¹⁴ *Ledesma v. Court of Appeals*, G.R. No. 113216, September 5, 1997, 278 SCRA 656, 673-674.

offenses and in holding trials arising from false, frivolous or groundless charges.”¹¹⁵

Hence, even at this stage, the investigating prosecutors are duty-bound to sift through all the documents, objects, and testimonies to determine what may serve as a relevant and competent evidentiary foundation of a possible case against the accused persons. They cannot defer and entirely leave this verification of all the various matters to the courts. Otherwise, the conduct of a preliminary investigation would be rendered worthless; the State would still be forced to prosecute frivolous suits and innocent men would still be unnecessarily dragged to defend themselves in courts against groundless charges. Indeed, while prosecutors are not required to determine the rights and liabilities of the parties, a preliminary investigation still constitutes a realistic judicial appraisal of the merits of the case¹¹⁶ so that the investigating prosecutor is not excused from the duty to weigh the evidence submitted and ensure that what will be filed in court is only such criminal charge that the evidence and inferences can properly warrant.¹¹⁷

The prosecutor’s call on the existence or absence of probable cause is further subject to the review of the Secretary of Justice who exercises the power of control over prosecutors.¹¹⁸ This much is clear in *Ledesma v. Court of Appeals*:¹¹⁹

Decisions or resolutions of prosecutors are subject to appeal to the secretary of justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings.

Section 39, Chapter 8, Book IV in relation to Section 5, 8, and 9, Chapter 2, Title III of the Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

‘(1) *Supervision and Control*.—Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; x x x’

¹¹⁵ Id. at 674.

¹¹⁶ *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 557.

¹¹⁷ *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, supra note 111, at 179.

¹¹⁸ *Joaquin, Jr. v. Drilon*, G.R. No. 108946, January 28, 1999, 302 SCRA 225, 231-232.

¹¹⁹ Supra note 114, at 677.

Supplementing the aforequoted provisions are Section 3 of R.A. 3783 and Section 37 of Act 4007, which read:

‘Section 3. x x x

The Chief State Prosecutor, the Assistant Chief State Prosecutors, the Senior State Prosecutors, and the State Prosecutors shall x x x perform such other duties as may be assigned to them by the Secretary of Justice in the interest of public service.’

x x x

x x x

x x x

‘Section 37. The provisions of the existing law to the contrary notwithstanding, whenever a specific power, authority, duty, function, or activity is entrusted to a chief of bureau, office, division or service, the same shall be understood as also conferred upon the proper Department Head who shall have authority to act directly in pursuance thereof, or to review, modify, or revoke any decision or action of said chief of bureau, office, division or service.’

‘Supervision’ and ‘control’ of a department head over his subordinates have been defined in administrative law as follows:

‘In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.’

Thus, pursuant to the last paragraph of Section 4, Rule 112 of the Rules of Court, if the Secretary of Justice reverses or modifies the resolution of the investigating prosecutor(s), he or she can direct the prosecutor(s) concerned “to dismiss or move for dismissal of the complaint or information with notice to the parties.”¹²⁰ This action is not subject to the review of courts unless there is a showing that the Secretary of Justice has committed a grave abuse of his discretion amounting to an excess or lack of jurisdiction in issuing the challenged resolution.¹²¹

Not every error in the proceedings, or every erroneous conclusion of law or fact, is grave abuse of discretion.¹²² The phrase “grave abuse of discretion” connotes “a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an

¹²⁰ RULES OF COURT, Rule 112, Sec. 4.

¹²¹ *Yu v. Lim*, G.R. No. 182291, September 22, 2010, 631 SCRA 172, 181-182.

¹²² *Ignacio v. Court of Appeals*, No. L-49541-52164, March 28, 1980, 96 SCRA 648, 654; *Villa-Rey Transit, Inc. v. Bello*, No. L-18957, April 23, 1963, 7 SCRA 735.

arbitrary and despotic manner by reason of passion and personal hostility, and it must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.”¹²³

In CA-G.R. SP No. 103461, the appellate court, in reversing the resolution of the Secretary of Justice, has evidently neglected this elementary principle. In fact, the CA has assumed, but has not sufficiently explained, how the Secretary of Justice’s decision finding the absence of probable cause to indict Salapuddin amounts to a grave abuse of discretion. Instead, the CA glossed over the testimonies presented by the parties and adopted the reversed conclusion of the Investigating Prosecutors that the totality of the evidence presented points to the probability that Salapuddin has participated in a conspiracy that culminated in the *Batasan* bombing.

Indeed, probable cause requires less proof than necessary for conviction. Nonetheless, it demands more than bare suspicion and must rest on competent relevant evidence.¹²⁴ A review of the records, however, show that **the only direct material evidence against Salapuddin, as he had pointed out at every conceivable turn, is the confession made by Ikram.** While the confession is arguably relevant, this is not the evidence competent to establish the probability that Salapuddin participated in the commission of the crime. On the contrary, as pointed out by the Secretary of Justice, **this cannot be considered against Salapuddin on account of the principle of *res inter alios acta alteri nocere non debet***¹²⁵ expressed in Section 28, Rule 130 of the Rules of Court:

Sec. 28. Admission by third-party. – The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

Clearly thus, an extrajudicial confession is binding only on the confessant.¹²⁶ It cannot be admitted against his or her co-accused and is considered as hearsay against them.¹²⁷ *Tamargo v. Awingan*¹²⁸ elaborated on the reason for this rule, viz:

[O]n a principle of good faith and mutual convenience, a man’s own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.

¹²³ *Chua Huat v. Court of Appeals*, G.R. Nos. 53851 & 63863, July 9, 1991, 199 SCRA 1, 18.

¹²⁴ *Ilusorio v. Ilusorio*, supra note 111.

¹²⁵ See *Tamargo v. Awingan*, G.R. No. 177727, January 19, 2010, 610 SCRA 316, 331.

¹²⁶ *Id.*; citing *People v. Vda de Ramos*, 451 Phil. 214, 224 (2003).

¹²⁷ *Id.*; citing *People v. Tizon, Jr.*, G.R. Nos. 133228-31, July 30, 2002, 385 SCRA 364, 388.

¹²⁸ *Id.*

The exception provided under Sec. 30, Rule 130 of the Rules of Court to the rule allowing the admission of a conspirator¹²⁹ **requires the prior establishment of the conspiracy by evidence other than the confession.**¹³⁰ **In this case, there is a dearth of proof demonstrating the participation of Salapuddin in a conspiracy** to set off a bomb in the *Batasan* grounds and thereby kill Congressman Akbar. Not one of the other persons arrested and subjected to custodial investigation professed that Salapuddin was involved in the plan to set off a bomb in the *Batasan* grounds. Instead, the investigating prosecutors did no more than to rely on Salapuddin's association with these persons to conclude that he was a participant in the conspiracy, ruling thus:

Respondent Gerry Salapuddin's participation in the forgoing, cannot be downplayed just because he did not actively take part in the planning. Rather, despite this, it has hands written all over it. **The circumstances, the people and place used are all, one way or another, associated with him. It cannot be mere coincidence.**¹³¹ (Emphasis supplied.)

This Court, however, has previously stressed that mere association with the principals by direct participation, without more, does not suffice.¹³² Relationship, association and companionship do not prove conspiracy.¹³³ Salapuddin's complicity to the crime, if this be the case, cannot be anchored on his relationship, if any, with the arrested persons or his ownership of the place where they allegedly stayed while in Manila.

It must be shown that the person concerned has performed an **overt act** in pursuance or furtherance of the complicity.¹³⁴ In fact, mere knowledge, acquiescence or approval of the act, without the cooperation or approval to cooperate, is not sufficient to prove conspiracy.¹³⁵ There must be positive and conclusive factual evidence indicating the existence of conspiracy,¹³⁶ and not simple inferences, conjectures and speculations¹³⁷ speciously sustained because "[i]t cannot be mere coincidence."¹³⁸

¹²⁹ **Sec. 30. Admission by conspirator.** – The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator **after the conspiracy is shown by evidence other than such act or declaration.** (Emphasis supplied.)

¹³⁰ *Id.*

¹³¹ *Rollo*, p. 902, Supplemental Resolution.

¹³² *People v. Huang Zhen Hua*, G.R. No. 139301, September 29, 2004, 439 SCRA 350, 369-370; citing *U.S. v. Percival*, 756 F.2d 600 (1985).

¹³³ *People v. Manijas*, G.R. No. 148699, November 15, 2002, 391 SCRA 731, 751.

¹³⁴ *People v. Elijorde*, G.R. No. 126531, April 21, 1999, 306 SCRA 188, 193-194.

¹³⁵ *People v. Huang Zhen Hua*, *supra* note 132.

¹³⁶ *People v. Argawanon*, G.R. No. 106538, March 30, 1994, 231 SCRA 614, 618.

¹³⁷ *People v. Halili*, G.R. No. 108662, June 27, 1995, 245 SCRA 340, 352.

¹³⁸ *Rollo*, p. 902.

The investigating prosecutors themselves were aware of the need for other clear and positive evidence of conspiracy besides the confession made by a supposed co-conspirator in charging a person with a crime committed in conspiracy. In discharging the Hataman brothers, the investigating prosecutors ratiocinated:

Apart from the statements implicating respondents Mujiv Hataman and Hadjiman Hataman-Salliman, no other evidence was presented to sufficiently establish their involvement in the crime. Certainly, this is not sufficient basis for finding probable cause to indict them for a non-bailable crime. To do so would open the floodgates to numerous possible indictments on the basis alone of name by mere mention of anyone. To establish conspiracy, evidence of actual cooperation, rather than mere cognizance or approval of an illegal act is required x x x.¹³⁹

Notably, the Hataman brothers were named not just by Ikram¹⁴⁰ but also by Jamiri¹⁴¹ and Aunal¹⁴² as the persons who ordered the murder of Congressman Akbar. It is with more reason, therefore, that the foregoing rationale applies squarely to Salapuddin who was mentioned only by Ikram, and not by the other persons arrested.

Indeed, the Secretary of Justice has decided in accordance with the dictates of our jurisprudence in overturning the investigating prosecutors and ordering Salapuddin's exclusion from the Information. The Secretary cannot plausibly be found culpable of grave abuse of his discretion. The appellate court has committed a reversible error in holding otherwise. As a matter of fact, the CA has failed to capture the import of Our ruling in *People v. Listerio*¹⁴³ in supporting its general declaration that "the totality of evidence"¹⁴⁴ indicates Salapuddin's participation in the conspiracy. The appellate court held:

[T]he totality of evidence sufficiently indicates the probability that Salapuddin lent moral and material support or assistance to the perpetrators or assistance to the perpetrators in the commission of the crime.

Jurisprudence teaches that 'it is necessary that a conspirator should have performed some overt acts as a direct or indirect contribution in the execution of the crime planned to be committed.' However, this overt act may consist of active participation in the actual commission of the crime itself, *or it may consist of moral assistance to his co-conspirators **by being present at the commission of the crime** or by exerting moral ascendancy over the other co-conspirators* x x x. (Emphasis supplied.)

¹³⁹ Id. at 233; citation omitted.

¹⁴⁰ Id. at 128.

¹⁴¹ Id. at 536-537.

¹⁴² Id. at 549, 551.

¹⁴³ G.R. No. 122099, July 5, 2000, 335 SCRA 40, 58-59; cited in CA Decision, *rollo*, p. 84.

¹⁴⁴ *Rollo*, p. 83.

In holding thus, the CA failed to correctly appreciate that even in *Listerio*, the “assistance,” which was considered by this Court as an “overt act” of conspiracy, was extended while “**by being present at the commission of the crime.**”¹⁴⁵ There We stressed:

x x x [T]he rule is that conspiracy must be shown to exist by direct or *circumstantial* evidence, as clearly and convincingly as the crime itself. In the absence of direct proof thereof, as in the present case, it may be deduced from the *mode, method, and manner* by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a *joint purpose and design, concerted action and community of interest*. Hence, **it is necessary that a conspirator should have performed some overt acts as a direct or indirect contribution in the execution of the crime planned to be committed.** The overt act may consist of active participation in the actual commission of the crime itself, *or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime* or by exerting moral ascendancy over the other co-conspirators.

Conspiracy transcends mere companionship, it denotes an intentional participation in the transaction with a view to the furtherance of the common design and purpose x x x. In this case, **the presence of accused-appellant, all of them armed with deadly weapons at the locus criminis, indubitably shows their criminal design to kill the victims.**¹⁴⁶ (Emphasis supplied.)

In this case, on the other hand, no evidence or testimony, not even Ikram’s, suggests the presence of Salapuddin during the blast that killed Congressman Akbar and injured several others. He cannot, therefore, be properly accused of exerting an “overt act” by extending “assistance” to whoever was responsible for the commission of the felony.

Furthermore, the very cases the appellate court cited provide that while conspiracy can be proven by circumstantial evidence, the series of evidence presented to establish an accused’s participation in the conspiracy **must be consistent** and should lead to no other conclusion but his participation in the crime as a conspirator.¹⁴⁷ After all, the conspiracy itself must be proved as positively as the commission of the felony itself, for it is a “facile device by which an accused may be ensnared and kept within the penal fold.”¹⁴⁸

¹⁴⁵ See *People v. Amodia*, G.R. No. 173791, April 7, 2009, 584 SCRA 518,

¹⁴⁶ *People v. Listerio*, supra note 143. See also *People v. Dacibar*, G.R. No. 111286, February 17, 2000, 325 SCRA 725, 13-14.

¹⁴⁷ *People v. Maluenda*, G.R. No. 115351, March 27, 1998, 288 SCRA 225, 229.

¹⁴⁸ *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1, 3.

The confession of Ikram relied on by investigating prosecutors and the appellate court does not provide the threshold consistent picture that would justify Salapuddin's complicity in the conspiracy that led to the *Batasan* bombing. Consider: Ikram made the allegation regarding Salapuddin's participation in the conspiracy in his fourth affidavit, after he categorically denied knowing who the mastermind was. In his affidavit dated November 16, 2007, Ikram gave the following answers to the questions thus indicated:

T: Bakit nyo daw papatayin si Wahab Akbar?

S: Hindi po sa amin pinaalam.

x x x x

T: **Alam mo ba kung sino ang nagutos sa inyo para patayin si Wahab Akbar?**

S: **Hindi po.**¹⁴⁹ (Emphasis supplied.)

He did not correct this statement in the two affidavits he executed on November 18, 2007. When shown his affidavit of November 16, 2007, Ikram did not refute his categorical statement denying any knowledge of the person who gave the command to kill Congressman Akbar. Instead, in the morning of November 18, 2007, he simply admitted that the November 16, 2007 affidavit was his own sworn statement:

T: Mayron akong ipapakitang sinumpaang salaysay ni IKRAM INDAMA Y LAWAMA na may petsa ika-16 ng Nobyembre 2007. Maaari bang suriin mo at sabihin mo kung ito ang sinasabi mong salaysay mo? (For purposes of identification, affiant was allowed to examine the Sinumapaang Salaysay of IKRAM INDAMA Y LAWAMA dated April 16, 2007.

S: Opo sa akin pong sinumpaang salaysay [na] ito.¹⁵⁰

He repeated this acknowledgment in the evening of November 18, 2007:

T: Mayron akong ipapakitang sinumpaang salaysay ni IKRAM INDAMA Y LAWAMA na may petsa ika-16 ng Nobyembre 2007. Maari bang suriin mo at sabihin mo kung ito ang sinasabi mong salaysay mo? (For purposes of identification, affiant was allowed

¹⁴⁹ *Rollo*, p. 105.

¹⁵⁰ *Id.* at 113.

to examine the Sinumpaang Salaysay of IKRAM INDAMA Y LAWAMA dated April 16, 2007)

S: Opo sa akin pong sinumpaang salaysay [na] ito.¹⁵¹

Again, Ikram made the same acknowledgment on November 20, 2007 when he did not say that he lied when he answered “*Hindi po*” to the question “*Alam mo ba kung sino ang nagutos sa inyo para patayin si Wahab Akbar?*” In his November 20, 2007 affidavit, Ikram stated:

T: Ikaw rin ba si Ikram Indama y Lawama na nagbigay ng Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-16 ng Nobyemb[re] 2007, Karagdagang Sinumpaang Salaysay kay PO3 Jonathan F Jornadal noong ika – 18 ng Nobyembre 2007 at Karagdagang Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-18 ng Nobyembre 2007?

S: Opo.

T: Ma[y]roon akong ipapakita sayong Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-16 ng Nobyemb[re] 2007, Karagdagang Sinumpaang Salaysay kay PO3 Jonathan F Jornadal noong ika-18 ng Nobyembre 2007 at Karagdagang Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-18 ng Nobyembre 2007 na iyong ibinigay. Maari mo bang suriin kung ito ang sinasabing salaysay mo? (For purposes of identification, affiant was allowed to examine the Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-16 ng Nobyemb[re] 2007, Karagdagang Sinumpaang Salaysay kay PO3 Jonathan F Jornadal noong ika – 18 ng Nobyembre 2007 at Karagdagang Sinumpaang Salaysay kay PO2 Ubaldo Macatangay Jr noong ika-18 ng Nobyembre 2007).

S: Opo, ako po ang nagbigay ng mga salaysay na yan.¹⁵²

Ikram’s acknowledged denial of the person behind the plan to kill Congressman Akbar is to be sure inconsistent with the claim he made in the very same affidavit dated November 20, 2007 that he heard Salapuddin order Redwan to kill Congressman Akbar.¹⁵³ Reference to Salapuddin as the mastermind behind the grand plan to kill Congressman Akbar also varies with Ikram’s claim that the Hataman brothers made the order on two separate occasions,¹⁵⁴ which allegation was, as previously stated, corroborated by Jamiri¹⁵⁵ and Aunal¹⁵⁶ in their own affidavits.

¹⁵¹ Id. at 117.

¹⁵² Id. at 122.

¹⁵³ Id. at 125.

¹⁵⁴ Id. at 128.

¹⁵⁵ Id. at 536-537.

¹⁵⁶ Id. at 549, 551.

Furthermore, if We consider Ikram's last affidavit where he moved back by at least a month the chronology of the alleged events that led to the *Batasan* bombing, the coherence of the arrested persons' narration crumbles. For instance, where Aunal stated that he, Redwan, and Ikram left Basilan for Manila on October 13, 2007,¹⁵⁷ Ikram maintained that they started for Manila way back on September 8, 2007.¹⁵⁸ And while Ikram claims that he witnessed Bong assemble the bomb on September 13, 2007, he himself maintains that the plan to kill Congressman Akbar by means of a bomb was hatched only four days after, or on September 17, 2007, and they shopped for the materials on September 19, 2007 or six days after the bombs were actually assembled.¹⁵⁹ Further, to reinforce Ikram's association with Salapuddin, a witness for the prosecution, Joel Maturan, was presented to make it appear that Ikram was driving Salapuddin's mini-truck on September 20, 2007 in Basilan.¹⁶⁰ Ikram himself, however, claims that he went home to Basilan only on October 14, 2007. It is not necessary to state the impossibility of Ikram being in two places at the same time. Ikram also alleged that Jamiri went to Greenbucks on September 17, 2007,¹⁶¹ but Jamiri claims that he went to Greenbucks during Ramadan in the month of October.¹⁶² Inconsistently, Ikram further claims that he saw the Hatamans at Figaro Café during the last week of September 2007, but Jamiri and Aunal both stated in their respective affidavits that the meeting with the Hatamans took place in the latter part of October 2007.¹⁶³

The discrepancies in Ikrams' affidavits and the variations in the statements of the other accused do not persuade this Court to find probable cause that Salapuddin, who was indicted primarily because of Ikram's confession, was part of the conspiracy that led to the *Batasan* bombing. Instead, while We are not pre-empting the findings of the trial court with regard to Ikram, Aunal, Jamiri and Kusain, the variations and the inconsistencies contained in their affidavits lend credence to their allegations of torture and coercion, especially as these allegations are supported by medical reports prepared by an independent medical practitioner who was assisted by the personnel of the Human Rights Commission.

It must not be neglected that strict adherence to the Constitution and full respect of the rights of the accused are essential in the pursuit of justice even in criminal cases. The presumption of innocence, and all rights associated with it, remains even at the stage of preliminary investigation. It is, thus, necessary that in finding probable cause to indict a person for the commission of a felony, only those matters which are constitutionally

¹⁵⁷ Id. at 547.

¹⁵⁸ Id. at 474.

¹⁵⁹ Id. at 475.

¹⁶⁰ Id. at 563.

¹⁶¹ Id. at 475.

¹⁶² Id. at 533.

¹⁶³ Id. at 536, 551.

acceptable, competent, consistent and material are considered. No such evidence was presented to sufficiently establish the probable cause to indict Salapuddin for the non-bailable offenses he is accused of. It, thus, behooves this Court to relieve petitioner from the unnecessary rigors, anxiety, and expenses of trial, and to prevent the needless waste of the courts' time and the government's resources.

WHEREFORE, the instant petition is **GRANTED** and the Decision dated August 6, 2008 and Resolution dated October 16, 2008 of the Court of Appeals in CA-G.R. SP No. 103461 are hereby **REVERSED** and **SET ASIDE**. The Resolution of the Secretary of Justice dated April 23, 2008 in I.S. No. 2007-992 is **REINSTATED**.


Accordingly, let the name of Gerry A. Salapuddin be stricken off and excluded from the Information for the complex crime of multiple murder and frustrated murder filed in Criminal Case No. Q-07-149982, Regional Trial Court, Branch 83 in Quezon City.

SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:



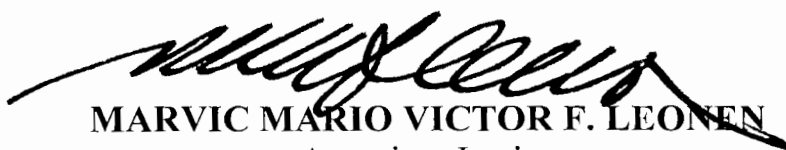
DIOSDADO M. PERALTA
Associate Justice



ROBERTO A. ABAD
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice