Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROSALINDA PUNZALAN, RANDALL PUNZALAN and RAINIER PUNZALAN,
Petitioners,

- versus -

MICHAEL GAMALIEL J. PLATA and RUBEN PLATA,
Respondents.

G.R. No. 160316

Present:

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

Promulgated:

SEP 0 2 2013

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DECISION

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 29, 2003 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 62633, which annulled and set aside the June 6, 2000[2] and October 11, 2000[3] Resolutions of the Department of Justice *(DOJ)* and reinstated its (DOJ's) March 23, 2000 Resolution[4] ordering the City Prosecutor of Mandaluyong City to file separate informations charging the petitioners, Rosalinda Punzalan *(Rosalinda)*, Rainier Punzalan *(Rainier)*, Randall Punzalan *(Randall)* and several other individual with various offenses - three *(3)* counts of Slight Oral Defamation against petitioner Rosalinda Punzalan *(Rosalinda)*; two (2)

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[1] *Rollo*, pp. 38-46. Penned by Associate Justice Elvie John S. Asuncion and concurred in by Associate Justice Mercedes Gozo-Dadole and then Associate Justice Lucas P. Bersamin (now a member of this Court)
[2] Id. at 123-127.
[3] Id. at 140-143.
[4] Id. at 95-104.

counts of Light Threat against Alexander "Toto" Ofrin; Attempted Homicide against Alexander "Toto" Ofrin, petitioners Rainier and Randall, Jose Gregorio Lanuzo, Avelino Serrano, Lito Dela Cruz, Emmanuel Nobida, Mark Catap, Ricky Eugenio, Alejandro Diez, Vicente Joven Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar, and Raymond Poliquit; and Malicious Mischief and Theft against petitioners Rainier and Randall, Mark Catap, Alejandro Diez, Jose Fregorio Lanuzo, Alexander "Toto" Ofrin, Herson Mendoza, Emmanuel Nobida, Edwin Vivar, Avelino "Bobby" Serrano, and John Does.

The basic facts as found by the Court in G.R. No. 158543,[5] are as follows:

> The Punzalan and the Plata families were neighbors in Hulo Bliss, Mandaluyong City. At around 11:00 p.m. of August 13, 1997, Dencio dela Peña, a house boarder of the Platas, was in front of a store near their house when the group of Rainier Punzalan, Randall Punzalan, Ricky Eugenio, Jose Gregorio, Alex "Toto" Ofrin, and several others arrived. Ricky Eugenio shouted at Dela Peña, "*Hoy, kalbo, saan mo binili and sumbrero mo*?" Dela Peña replied, "*Kalbo nga ako, ay pinagtatawanan pa ninyo ako.*" Irked by the response, Jose Gregorio slapped Dela Peña while Rainier punched him in the mouth. The group then ganged up on him. In the course of the melee, somebody shouted, "*Yariin na 'yan!*" Thereafter, Alex "Toto" Ofrin kicked Dela Peña and tried to stab him with a *balisong* but missed because he was able to run. The group chased him.
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> While Dela Peña was fleeing, he met Robert Cagara, the Platas' family driver, who was carrying a gun. He grabbed the gun from Cagara and pointed it to the group chasing him in order to scare them. Michael Plata, who was nearby, intervened and tried to wrestle the gun away from Dela Peña. The gun accidentally went off and hit Rainier Punzalan on the thigh. Shocked, Dela Peña, Cagara and Plata ran towards the latter's house and locked themselves in. The group ran after them and when they got to the Platas' house, shouted, "*Lumabas kayo d'yan, putang ina ninyo! Papatayin namin kayo*!" Dela Peña, Cagara, and Plata left the house through the back door and proceeded to the police station to seek assistance.

Thereafter, Rainier filed a criminal complaint for Attempted Homicide against Michael Gamaliel Plata *(Michael)* and one for Illegal Possession of Firearms against Robert Cagara *(Cagara)*. On the other hand, Michael, Ruben Plata *(Ruben)* and several others filed several complaints against petitioners Rosalinda, Randall, Rainier, and several individuals before the Office of the City Prosecutor, Mandaluyong City, to wit:

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[5] Entitled "*Rosalinda Punzalan, Randall Punzalan and Rainier Punzalan v. Dencio Dela Peña and Robert Cagara*, 478 Phil. 771 (2004).

Investigation Slip No. ***(I.S. No.)***	**Charge**	**Parties**
97-11485	Slight Physical Injuries	Roberto Cagara v. Randal Punzalan, Avelino Serrano, Raymond Poliguit, Alex "Toto" Ofrin, Alejandro Diez, Jose Gregorio Lanuzo, Mark Catap, Vicente "Joven" Manda, Mark Labrador and Herson Mendoza
97-11487	Grave Oral Defamation	Michael Gamaliel J. Plata v. Rosalinda Punzalan
97-11492	Grave Threats	Michael Gamaliel J. Plata v. Rosalinda Punzalan
97-11520	Grave Threats	Dencio Del Peña v. Alex "Toto" Ofrin
97-11521	Grave Threats	Dencio Dela Peña v. Alex "Toto" Ofrin
97-11522	Grave Oral Defamation	Dencio Dela Peña v. Rosalinda Punzalan
97-11523	Grave Oral Defamation	Robert Cagara v. Rosalinda Punzalan
97-11528	Attempted Murder	Dencio Dela Peña v. Alexander "Toto" Ofrin, Rainier Punzalan, Jose Gregorio Lanuzo, Avelino Serrano, Lito Dela Cruz, Emmanuel Nibida, Randal Punzalan, mark Catap, Ricky Eugenio, alejandro Diez, Vincente "Koven" Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar and Raymond Poliquit
97-11764	Grave Oral Defamation	Roland Curampes and Robert Cagara v. Avelino Serrano, Randal Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Raymond Poliquit, Alex Pascua, Rainier Punzalan, Alexander "Toto" Ofrin and Edwin Vivar
97-11765	Malicious Mischief	Michael Gamaliel J. Plata v. Avelino Serrano, Randal Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Rainier Punzalan, Alexander "Toto" Ofrin, Edwin Vivar, Mark Catap, Joven Manda and Jose Gregorio Lanuzo
	Robbery	Michael Gamaliel J. Plata v. Avelino Serrano, Randal Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Rainier Punzalan,

97-11766		Alexander "Toto" Ofrin, Edwin Vivar, Mark Catap, Vicente "Joven" Manda and Jose Gregorio Lanuzo
97-11786	Grave Oral Defamation	Michael Gamaliel J. Plata v. Rosalinda Punzalan

On July 28, 1998, the Office of the City Prosecutor, in its Joint Resolution,[6] dismissed the complaints filed against the petitioners for lack of sufficient basis both in fact and in law, giving the following reasons:

> The investigation and affidavits of all parties reveal that the above cases have no sufficient basis. First, as regards the **Grave Oral Defamation** charges against Rosalinda Punzalan allegedly committed on the 13th of August 1997 and 16th of October 1997 (I.S. Nos. 97-11487, 97-11786; 97-11522 and 97-11523), the alleged defamatory statements are not supported by any evidence to prove that they would 'cast dishonor, discredit or contempt upon another person (Article 359, Revised Peñal Code), which are essential requisites of Grave Oral Defamation. Complainants presented no evidence aside from their claims to prove their cases; hence, insufficient. Further, the records show that the alleged defamatory statements were made by respondent during the scheduled hearing of one of the above case, which even if true, must have been said while in a state of distress caused by the filing of the above numerous cases filed against her family, hence, not actionable. The same also holds true with the other Oral Defamation and Grave Threat charges allegedly committed on October 21, 1997 by Avelino Serrano and 15 other persons including the sons of Rosalinda Punzalan named Randal and Rainier against Roberto Cagara and Ronald Curampes (I.S. No. 11764), the alleged defamatory statements are not supported by any evidence that would cause dishonor, discredit or contempt upon another person neither would such utterances constitute an act which may fall under the definition of 'Grave Threat' which complainant's claimed against them because such utterances do not amount to a crime.
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> > 'Merely insulting or abusive words are not actionable, unless they constitute defamation punishable by law (Isidro vs Acuna, 57 O.G. 3321) as to make the party subject to disgrace, ridicule or contempt or affect one injuriously in his office, profession, trade or occupation (People vs. Perez, 11 CA Rep. 207).'
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> Moreover, the elements of 'PUBLICATION' is not alleged nor proved by complainants, hence, not applicable.

[6] CA *rollo*, pp. 28-35.

> 'The only element of grave oral defamation not found in intriguing against honor is publication' (People vs. Alcosaba, 30 April 1964)

As regards the case of **Attempted Murder** (I.S. No. 97-11528) allegedly committed on 13 August 1997 by Ranier Punzalan, et al., the same is already the subject of other two (2) criminal cases docketed as Crim. Case No. 66879 and 66878 entitled 'People vs. Michael Plata' for Attempted Homicide and 'People vs. Roberto Cagara' for Illegal Possession of Firearm, respectively, both pending before Branch 60, MTC of Mandaluyong; hence, cannot be the subject of another case, conformably with the foregoing pronouncement of the high court:

x x x x

In the case at bar, what is undisputed is that RAINIER sustained a gunshot wound in his thigh for which reason he filed a case of frustrated murder and illegal possession of firearms. The version of Michael Plata and Dencio Dela Peña (the defendants in said two cases) is that the latter was seen by Plata and Cagara while Dencio was being mauled by RAINIER, et al., thereby compelling Plata and Cagara to go out of Plata's house and defend Dencio. Dencio run towards Plata and Cagara and took the gun out of Cagara's hand and aimed the gun at RAINIER, et al. which, in turn, forced Plata to grapple with Cagara to prevent Cagara from hurting anyone but unfortunately, the gun accidentally fired and hit RAINIER in the thigh.

Thus, whether the shooting of RAINIER arose from Plata's and Cagara's attempt to defend Dencio from the mauling by Rainier, et al. or from an accident, the elements of these justifying (defense of strangers) and exempting circumstances (accident) should properly be established WITH CLEAR AND CONVINCING EVIDENCE NOT in the attempted murder case filed against RAINIER, et., al. by Dencio but in the attempted homicide case filed against Michael Plata by RAINIER, there being a clear admission as to the fact of shooting which wounded RAINIER who filed a frustrated murder case but was eventually downgraded to attempted homicide.

With regard to the alleged **robbery** (I.S. no. 97-11766) which was allegedly committed on the same date as the malicious mischief (I.S. No. 97-11765), these two (2) cases cannot be the product of the same criminal act for some element of one may be absent in the other, particularly "animus lucrandi." Further, it is noted that the complainant in the robbery case, who is the same complainant in the malicious mischief (Michael Plata), use the very "same affidavit" for the two (2) different charges with no other obvious intention aside from harassing the respondents.

> As regards the claim of **Slight Physical Injuries** (I.S. No. 97-11485), it appears on the affidavit of the complainants, Robert Cagara ("CAGARA") and Dencio Dela Peña ("DENCIO"), that they have conflicting statements which were not properly explained during the investigation. According to Cagara, he and Dencio were standing near the gate of the Platas 'bandang looban' and it was the house which was stoned and Cagara was accidentally hit by one of these stones which were aimed at the house and not at him; however, in Dencio's affidavit, he claimed that Randal Punzalan hit Cagara on the shoulder with a bottle while the latter himself did not even mention this in his own affidavit. These inconsistencies belied their claim. Moreover, it is noted that the complaint for Slight Physical Injuries was filed belatedly (10 October 1997), more than a month after the commission of the alleged act on 30 August 1997 and that the Medical Certificate of Cagara was issued much later (15 October 1997) from the commission of the alleged injuries and Cagara did not even bother to explain this in his affidavit.
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> As regards the charge of **Grave Threat** (I.S. No. 97-11492, 97-11520 and 97-11521), there is no act which may fall under the definition of "grave threat" because the utterances claimed do not amount to a crime. Further, in I.S. No. 97-11492, the alleged threat was made through telephone conversations and even to the complainant himself, hence, they did not pose any danger to the life and limbs nor to the property of the complainant.
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> x x x x
>
> WHEREFORE, premises considered, the above cases are hereby dismissed for lack of sufficient basis in fact and in law.[7] [Emphases supplied]

The complainants in I.S. Nos. 97-11487, 97-11523, 97-11786, 97-11520, 97-11521, 97-11528, 97-765, and 11-766 filed their separate petitions[8] before the DOJ. On March 23, 2000, the DOJ modified the July 28, 1998 Joint Resolution of the Office of the City Prosecutor and ordered the filing of separate informations for Slight Oral Defamation, Light Threats, Attempted Homicide, Malicious Mischief, and Theft against Rosalinda, Rainier, Randall and the other respondents in the above cases. The latter filed a motion for reconsideration,[9] dated April 28, 2000. Upon review , the DOJ reconsidered its findings and ruled that there was no probable cause. In its Resolution, dated June 6, 2000, the DOJ set aside its March 23, 2000 Resolution and directed the Office of the City Prosecutor to withdraw the informations.

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[7] Id. at 32-35.
[8] Id. at 36-44, 45-52.
[9] Id. at 93-103.

Not in conformity, the complainants moved for a reconsideration of the June 6, 2000 Resolution but the DOJ denied the motion in its Resolution, dated October 11, 2000.

On January 11, 2001, the complainants elevated the matter to the CA by way of *certiorari* ascribing grave abuse of discretion on the part of the DOJ Secretary which ordered the withdrawal of the separate informations for Slight Oral Defamation, Other Light Threats, Attempted Homicide, Malicious Mischief and Theft.

On September 29, 2003, the CA annulled and set aside the June 6, 2000 and October 11, 2000 Resolutions of the DOJ and reinstated its March 23, 2000 Resolution. In the said decision, the CA explained that:

> In the conduct of a preliminary investigation, the main purpose of the same is to determine "whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof," (Tandoc vs. Resultan, 175 SCRA 37). Based on the records We hold that probable cause exists in the subject complaints.
>
> Re: the complaints filed for malicious mischief and theft, We hold that said complaints had sufficient basis. Contrary to the second ruling of the Secretary of Justice that there was lack of eye witnesses to support the alleged act constituting the complaint, there were persons who claimed to have seen the respondents as they were running away from the place of incident. The joint affidavit of witnesses Rolando Curampes and Robert Cagara attest and corroborate the allegations in the complaint. Further the circumstances surrounding the incident as well as the presence of the defendants in the scene of the crime yield to strong presumption that the latter may have had some participation in the unlawful act. Since there was positive identification of the alleged malefactors, the complaints should not be dismissed, and trial should proceed to allow for the presentation of evidence in order for the court to determine the culpability or non-culpability of the alleged transgressors.
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> As regards the complaints for oral defamation, the Secretary of Justice belatedly maintains that said complaints had no basis and that the evidence presented was not sufficient considering that the alleged defamatory words were uttered in a state of shock and anger. We, however, rule otherwise.
>
> The complaints for oral defamation were filed based on three separate occasions whereupon the respondent Rosalinda Punzalan by harsh and insulting words casted aspersions upon the person of Michael Plata in the presence of other people. To say that the words thus uttered were not malicious and were only voiced because of shock and anger is beyond disbelief since respondent Punzalan

> could not have been in a state of shock in all three separate occasions when such remarks were made. And even if such remarks were made in the heat of anger, at the very least the act still constitutes light oral defamation.
>
> Likewise, the complaint against Ofrin was not without basis since the supporting affidavits submitted and the allegation of the complainant positively identifying defendant Ofrin as the culprit, were sufficient to establish probable cause. That there were other persons who allegedly did not see any fighting that day and time when the incident took place, was not sufficient reason to dismiss the said complaint for lack of basis. The positive identification made by the witnesses for the complainant must be given credence over the bare denials made by respondents. "Alibi and denial are inherently weak and could not prevail over the positive testimony of the complainant" (People v. Panlilio, 255 SCRA 503).
>
> From the above discussions, We find that the Secretary of Justice committed grave abuse of discretion when he issued the assailed June 6, 2000 Resolution where he reversed himself after finding earlier, in his March 23, 2000 Resolution that:
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> x x x x
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> WHEREFORE, based on the foregoing, the Resolutions of the Secretary of Justice dated June 6, 2000 and October 11, 2000 are hereby ANNULLED and SET ASIDE. The Resolution of the Secretary of Justice dated March 23, 2000 (Resolution No. 594, Series of 2000) is REINSTATED.
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> SO ORDERED.[10]

Hence, this petition filed by Rosalinda, Randal and Rainier, anchored on the following:

ASSIGNMENT OF ERRORS

> **1. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS REVERSIBLE ERROR IN SETTING ASIDE THE RESOLUTIONS OF THE HONORABLE SECRETARY OF JUSTICE DATED JUNE 6, 2000 AND OCTOBER 11, 2000.**
>
> **2. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT, AT THE VERY LEAST, THE REMARKS MADE BY PETITIONER ROSALINDA PUNZALAN CONSTITUTE SLIGHT ORAL DEFAMATION.**

[10] *Rollo*, pp. 42-45.

> **3. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE ALLEGATIONS OF RESPONDENTS' WITNESSES, ROLANDO CURAMPES AND ROBERT CAGARA, ARE SUFFICIENT BASES FOR PROSECUTING PETITIONERS RANDALL AND RAINIER PUNZALAN FOR MALICIOUS MISCHIEF AND THEFT.**[11]

In essence, the petitioners argue that the determination of the existence of probable cause is lodged with the prosecutor, who assumes full discretion and control over the complaint. They insist that the DOJ committed no grave abuse of discretion when it issued the June 6, 2000 and October 11, 2000 Resolutions ordering the withdrawal of the informations. In the absence of grave abuse of discretion, they contend that the courts should not interfere with the discretion of the prosecutor.

The Court finds the petition meritorious.

The well-established rule is that the conduct of preliminary investigation for the purpose of determining the existence of probable cause is a function that belongs to the public prosecutor.[12] Section 5, Rule 110 of the Rules of Court, as amended,[13] provides:

> **Section 5**. *Who must prosecute criminal action.* - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The prosecution of crimes lies with the executive department of the government whose principal power and responsibility is to see that the laws of the land are faithfully executed. "A necessary component of this power to execute the laws is the right to prosecute their violators." Succinctly, the public prosecutor is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the

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[11] Id. at 15-16.
[12] *Paredes v. Calilung*, 546 Phil. 198, 224 (2007).
[13] A.M. No. 02-2-07-SC.

crime and should be held for trial.[14] In the case of *Crespo v. Mogul*,[15] the Court ruled:

> It is a cardinal principle that all criminal actions either commenced by a 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 prosecution by private persons. It cannot be controlled by the complainant. Prosecuting officers under the power vested in them by 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 legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a *prima facie* case.[16]

Consequently, the Court considers it a sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the DOJ a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of the supposed offenders.[17] The rule is based not only upon the respect for the investigatory and prosecutory powers granted by the Constitution to the executive department but upon practicality as well.[18] As pronounced by this Court in the separate opinion of then Chief Justice Andres R. Narvasa in the case of *Roberts, Jr. v. Court of Appeals*,[19]

> In this special action, this Court is being asked to assume the function of a public prosecutor. It is being asked to determine whether probable cause exists as regards petitioners. More concretely, the Court is being asked to examine and assess such evidence as has thus far been submitted by the parties and, on the basis thereof, make a conclusion as to whether or not it suffices to engender a well founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.

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[14] *SPO4 Soberano v. People of the Philippines*, 509 Phil. 118, 132-133 (2005).
[15] 235 Phil. 465 (1987).
[16] Id. at 472 .
[17] *First Women's Credit Corporation v. Perez*, 524 Phil. 305, 308-309 (2006).
[18] *Buan v. Matugas*, 556 Phil. 110, 119 (2007).
[19] 324 Phil. 568, 619-622 (1996).

> It is a function that this Court should not be called upon to perform. It is a function that properly pertains to the public prosecutor, one that, as far as crimes cognizable by a Regional Trial Court are concerned, and notwithstanding that it involves adjudication process of a sort, exclusively pertains, by law, to said executive officer, the public prosecutor. It is moreover a function that in the established scheme of things, is supposed to be performed at the very genesis of, indeed, prefatorily to, the formal commencement of a criminal action. The proceedings before a public prosecutor, it may well be stressed, are essentially preliminary, prefatory, and cannot lead to a final, definite and authoritative adjudgment of the guilt or innocence of the persons charged with a felony or crime.
>
> Whether or not that function has been correctly discharged by the public prosecutor-i.e., whether or not he had made a correct ascertainment of the existence of probable cause in a case- is a matter that the trial court itself does not and may not be compelled to pass upon. There is no provision of law authorizing an aggrieved party to petition for a such a determination. It is not for instance permitted for an accused, upon the filing of an information against him by the public prosecutor, to preempt trial by filing a motion with the Trial Court praying for the quashal or dismissal of the indictment on the ground that the evidence upon which the same is based is inadequate. Nor is it permitted, on the antipodal theory that the evidence is in truth adequate, for the complaining party to present a petition before the Court praying that the public prosecutor be compelled to file the corresponding information against the accused.
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> Besides, the function this Court is asked to perform is that of a trier of facts which it does not generally do, and if at all, only exceptionally, as in an appeal in a criminal action where the penalty of life imprisonment, *reclusion perpetua*, or death has been imposed by a lower court (after due trial, of course), or upon a convincing showing of palpable error as regards a particular factual conclusion in the judgment of such lower court.

Thus, the rule is that this Court will not interfere in the findings of the DOJ Secretary on the insufficiency of the evidence presented to establish probable cause unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction.[20] Grave abuse of discretion, thus "means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[21] The party seeking the writ of certiorari must establish that the DOJ Secretary exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent

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[20] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 330.
[21] *Aduan v. Chong*, G.R. No. 172796, July 13, 2009, 592 SCRA 508, 514.

and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.[22]

In the present case, there was no clear evidence of grave abuse of discretion committed by the DOJ when it set aside its March 23, 2000 Resolution and reinstated the July 28, 1998 Resolution of the public prosecutor. The DOJ was correct when it characterized the complaint for attempted murder as already covered by two (2) other criminal cases. As to the other complaints, the Court agrees with the DOJ that they were weak and not adequately supported by credible evidence. Thus, the CA erred in supplanting the prosecutor's discretion by its own. In dismissing the complaint of Michael and Ruben, the DOJ reasoned that:

> Record reveals that Plata and Caraga instituted the instant complaints against herein respondents only after they were charged with attempted homicide and illegal possession of firearms by respondent Rainier Punzalan. Hence, it appears that the complaints are in the **nature of countercharges** against respondents.
>
> Indeed, as found by the investigating prosecutor, the evidence on record is **not sufficient** to **sustain a finding of probable cause** against all of respondents for the crimes charged. When Rosalinda Punzalan uttered the alleged defamatory statements, she was in a state of anger and shock considering that her son Rainier was injured in an altercation between his group and that of Plata's. Thus, the circumstances surrounding the case show that she did not act with malice. Besides, aside from complaints allegations, there is nothing on record to prove that the utterances were made within the hearing distance of third parties.
>
> Relative to the charge against Alexander "Toto" Ofrin, there is likewise **no corroborative evidence** to show that he drew a knife in a quarrel with Dela Peña. In contradiction, respondents' witnesses Ravina Mila Villegas and Ruben Aguilar, Jr., who were not assailed as biased witnesses, stated that they did not see anyone fighting at the time and in the place of the incident.
>
> With respect to the charge of attempted homicide, the allegations supporting the same should first be threshed out in the full blown trial of the charge for attempted homicide against Plata, wherein, the testimony of complainant Dela Peña will be presented as part of the defense evidence. Moreover, it bears stressing that **aside from Dela Peña's allegations** and the **medical certificate obtained forty-five (45) days after the mauling**, **there is no showing that respondents intended to kill him.**

[22] *Auto Prominence Corporation v. Winterkorn*, G.R. No. 178104, January 27, 2009, 577 SCRA 51, 61.

> Further, the charge for malicious mischief and theft are also not supported by evidence. In the **absence of eyewitnesses** who positively identified respondents as the perpetrators of the crime the photographs submitted are incompetent to indicate that respondents committed the acts complained of. The respondents here were merely charged on the basis of conjectures and surmises that they may have committed the same due to their previous altercations.
>
> WHEREFORE, in view of the foregoing, the appealed resolution is REVERSED. The resolution dated March 23, 2000 is set aside and the City Prosecutor of Mandaluyong City is directed to withdraw the separate informations for slight oral defamation, other light threats, attempted homicide, malicious mischief, and theft against all respondents and to report the action taken withim ten (10) days from receipt hereof.
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> SO ORDERED.[23] [Emphases supplied]

Evidently, the conclusions arrived at by the DOJ were neither whimsical nor capricious as to be corrected by *certiorari.* Even on the assumption that the DOJ Secretary made erroneous conclusions, such error alone would not subject his act to correction or annulment by the extraordinary remedy of *certiorari.*[24] After all, not "every erroneous conclusion of law or fact is an abuse of discretion."[25]

WHEREFORE, the petition is **GRANTED.** The September 29, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 62633 is **REVERSED** and **SET ASIDE**. The June 6, 2000 and the October 11, 2000 Resolutions of the Department of Justice are **REINSTATED**.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[23] CA *rollo*, pp. 79-80.
[24] *Insular Life Assurance Company, Limited v. Serrano,* 552 Phil. 469, 479 (2007).
[25] *Estrada v. Desierto*, 487 Phil. 169, 188 (2004).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

ROBERTO A. ABAD
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest 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's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice