Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ELISEO V. AGUILAR, Petitioner,	**G.R. No. 197522**
- versus -	
DEPARTMENT OF JUSTICE, PO1 LEO T. DANGUPON, 1ST LT. PHILIP FORTUNO, CPL. EDILBERTO ABORDO, SPO3 GREGARDRO A. VILLAR, SPO1 RAMON M. LARA, SPO1 ALEX L. ACAYLAR, and PO1 JOVANNIE C. BALICOL, Respondents.	Present: CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.* Promulgated: SEP 11 2013

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D E C I S I O N

***PER CURIAM*:**

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110110 which affirmed the Resolution[3] dated November 27, 2008 of the Department of Justice (DOJ) in I.S. No. 2002-414, upholding the provincial prosecutor's dismissal of the criminal complaint for murder filed by petitioner Eliseo V. Aguilar against respondents.

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1 *Rollo*, pp. 9-34.

2 Id. at 38-46. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Agnes Reyes-Carpio, concurring.

3 Id. at 92-97. Penned by Undersecretary Fidel J. Exconde, Jr.

The Facts

Petitioner is the father of one Francisco M. Aguilar, alias Tetet (Tetet). On April 10, 2002, he filed a criminal complaint[4] for murder against the members of a joint team of police and military personnel who purportedly arrested Tetet and later inflicted injuries upon him, resulting to his death. The persons charged to be responsible for Tetet's killing were members of the Sablayan Occidental Mindoro Police Force, identified as respondents SPO3 Gregardro A. Villar (Villar), SPO1 Ramon M. Lara (Lara), SPO1 Alex L. Acaylar (Acaylar), PO1 Leo T. Dangupon (Dangupon), and PO1 Jovannie C. Balicol (Balicol), and members of the Philippine Army, namely, respondents 1st Lt. Philip Fortuno[5] (Fortuno) and Cpl. Edilberto Abordo (Abordo).[6]

In the petitioner's complaint, he averred that on February 1, 2002, between 9:00 and 10:00 in the morning, at Sitio Talipapa, Brgy. Pag-asa, Sablayan, Occidental Mindoro (Sitio Talipapa), Tetet was arrested by respondents for alleged acts of extortion and on the suspicion that he was a member of the Communist Party of the Philippines/National People's Army Revolutionary Movement. Despite his peaceful surrender, he was maltreated by respondents. In particular, Tetet was hit on different parts of the body with the butts of their rifles, and his hands were tied behind his back with a black electric wire. He was then boarded on a military jeep and brought to the Viga River where he was gunned down by respondents.[7] Petitioner's complaint was corroborated by witnesses Adelaida Samillano and Rolando Corcotchea who stated, among others, that they saw Tetet raise his hands as a sign of surrender but was still mauled by armed persons.[8] A certain Dr. Neil Bryan V. Gamilla (Dr. Gamilla) of the San Sebastian District Hospital issued a medical certificate dated February 1, 2002,[9] indicating that Tetet was found to have sustained two lacerated wounds at the frontal area, a linear abrasion in the anterior chest and five gunshot wounds in different parts of his body.[10]

In defense, respondents posited that on February 1, 2002, they were engaged in an operation – headed by Chief of Police Marcos Barte (Barte) and Fortuno – organized to entrap a suspected extortionist (later identified as Tetet) who was allegedly demanding money from a businesswoman named Estelita Macaraig (Macaraig). For this purpose, they devised a plan to apprehend Tetet at Sitio Talipapa which was the place designated in his extortion letters to Macaraig. At about 11:00 in the morning of that same

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4 Id. at 47. Captioned as "Sinumpaang Salaysay."
5 "1st Lt. Philip Paul Fortuno" in some parts of the records.
6 *Rollo*, pp. 38-39.
7 Id. at 39.
8 Id.
9 Id. at 68. Dated February 4, 2002 in the Final Investigation Report of the Commission on Human Rights.
10 Id. at 39-40 and 68.

day, Tetet was collared by Sgt. Ferdinand S. Hermoso (Hermoso) while in the act of receiving money from Macaraig's driver, Arnold Magalong. Afterwards, shouts were heard from onlookers that two persons, who were supposed to be Tetet's companions, ran towards the mountains. Some members of the team chased them but they were left uncaught. Meanwhile, Tetet was handcuffed and boarded on a military jeep. Accompanying the latter were Dangupon, Fortuno, Abordo, Barte, and some other members of the Philippine Army (first group). On the other hand, Villar, Lara, Acaylar, and Balicol were left behind at Sitio Talipapa with the instruction to pursue Tetet's two companions. As the first group was passing along the Viga River, Tetet blurted out to the operatives that he would point out to the police where his companions were hiding. Barte stopped the jeep and ordered his men to return to Sitio Talipapa but, while the driver was steering the jeep back, Tetet pulled a hand grenade clutched at the bandolier of Abordo, jumped out of the jeep and, from the ground, turned on his captors by moving to pull the safety pin off of the grenade. Sensing that they were in danger, Dangupon fired upon Tetet, hitting him four times in the body. The first group brought Tetet to the San Sebastian District Hospital for treatment but he was pronounced dead on arrival.[11]

Among others, the Commission on Human Rights investigated Tetet's death and thereafter issued a Final Investigation Report[12] dated October 3, 2002 and Resolution[13] dated October 8, 2002, recommending that the case, *i.e.*, CHR CASE NR. IV-02-0289, "be closed for lack of sufficient evidence." It found that Tetet's shooter, Dangupon, only shot him in self-defense and added that "Dangupon enjoys the presumption of innocence and regularity in the performance of his official duties, which were not sufficiently rebutted in the instant case."[14]

Likewise, the Office of the Provincial Director of the Occidental Mindoro Police Provincial Command conducted its independent inquiry on the matter and, in a Report dated September 21, 2002, similarly recommended the dismissal of the charges against respondents. Based on its investigation, it concluded that respondents conducted a legitimate entrapment operation and that the killing of Tetet was made in self-defense and/or defense of a stranger.[15]

The Provincial Prosecutor's Ruling

In a Resolution [16] dated March 10, 2003, 1st Asst. Provincial Prosecutor and Officer-in-Charge Levitico B. Salcedo of the Office of the Provincial Prosecutor of Occidental Mindoro (Provincial Prosecutor)

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11 Id. at 40-41.
12 Id. at 64-69. Prepared by Anson L. Chumacera.
13 Id. at 63. Signed by Attorney V Dante Santiago M. Rito.
14 Id.
15 Id. at 76.
16 Id. at 70-78.

dismissed petitioner's complaint against all respondents for lack of probable cause. To note, Barte was dropped from the charge, having died in an ambush pending the investigation of the case.[17]

The Provincial Prosecutor held that the evidence on record shows that the shooting of Tetet by Dangupon "was done either in an act of self-defense, defense of a stranger, and in the performance of a lawful duty or exercise of a right of office."[18] He further observed that petitioner failed to submit any evidence to rebut Dangupon's claim regarding the circumstances surrounding Tetet's killing.[19]

In the same vein, the Provincial Prosecutor ruled that Villar, Acaylar, Lara, and Balicol could not be faulted for Tetet's death as they were left behind in Sitio Talipapa unaware of what transpired at the Viga River. As to the alleged maltreatment of Tetet after his arrest, the Provincial Prosecutor found that these respondents were not specifically pointed out as the same persons who mauled the former. He added that Hermoso was, in fact, the one who grabbed/collared Tetet during his apprehension. The Provincial Prosecutor similarly absolved Fortuno and Abordo since they were found to have only been in passive stance.[20]

Aggrieved, petitioner elevated the matter *via* a petition for review[21] to the DOJ.

The DOJ Ruling

In a Resolution[22] dated November 27, 2008, the DOJ dismissed petitioner's appeal and thereby, affirmed the Provincial Prosecutor's ruling. It ruled that petitioner failed to show that respondents conspired to kill/murder Tetet. In particular, it was not established that Villar, Lara, Acaylar, and Balicol were with Tetet at the time he was gunned down and, as such, they could not have had any knowledge, much more any responsibility, for what transpired at the Viga River.[23] Neither were Barte, Fortuno, and Abordo found to have conspired with Dangupon to kill Tetet since their presence at the time Tetet was shot does not support a conclusion that they had a common design or purpose in killing him.[24] With respect to Dangupon, the DOJ held that no criminal responsibility may be attached to him since his act was made in the fulfillment of a duty or in the lawful exercise of an office under Article 11(5) of the Revised Penal Code[25]

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17 Id. at 40.
18 Id. at 76.
19 Id. at 78.
20 Id.
21 Id. at 79-82. Dated March 24, 2003.
22 Id. at 92-97.
23 Id. at 95.
24 Id. at 96.
25 Act No. 3815. "AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS."

(RPC).[26] Lastly, the DOJ stated that petitioner's suppositions and conjectures that respondents salvaged his son are insufficient to overturn the presumption of innocence in respondents' favor.[27]

Unperturbed, petitioner filed a petition for *certiorari*[28] with the CA.

The CA Ruling

In a Decision[29] dated June 30, 2011, the CA dismissed petitioner's *certiorari* petition, finding no grave abuse of discretion on the part of the DOJ in sustaining the Provincial Prosecutor's ruling. It found no evidence to show that Tetet was deliberately executed by respondents. Also, it echoed the DOJ's observations on respondents' presumption of innocence.[30]

Hence, this petition.

The Issue Before the Court

Petitioner builds up a case of extralegal killing and seeks that the Court resolve the issue as to whether or not the CA erred in finding that the DOJ did not gravely abuse its discretion in upholding the dismissal of petitioner's complaint against respondents.

The Court's Ruling

The petition is partly granted.

At the outset, it is observed that the Provincial Prosecutor's ruling, as affirmed on appeal by the DOJ and, in turn, upheld on *certiorari* by the CA, may be dissected into three separate disquisitions: ***first***, the lack of probable cause on the part of Dangupon, who despite having admitted killing the victim, was exculpated of the murder charge against him on account of his interposition of the justifying circumstances of self-defense/defense of a stranger and fulfillment of a duty or lawful exercise of a right of an office under Article 11(5) of the RPC; ***second***, the lack of probable cause on the part of Fortuno and Abordo who, despite their presence during the killing of Tetet, were found to have no direct participation or have not acted in conspiracy with Dangupon in Tetet's killing; and ***third***, the lack of probable cause on the part of Villar, Lara, Acaylar, and Balicol in view of their absence during the said incident. For better elucidation, the Court deems it

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26 *Rollo*, p. 96.
27 Id. at 97.
28 Id. at 98-109. Dated August 3, 2009.
29 Id. at 38-46.
30 Id. at 45.

apt to first lay down the general principles which go into its review process of a public prosecutor's probable cause finding, and thereafter apply these principles to each of the above-mentioned incidents *in seriatim*.

A. General principles; judicial review of a prosecutor's probable cause determination.

A public prosecutor's determination of probable cause – that is, one made for the purpose of filing an information in court – is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. While defying precise definition, grave abuse of discretion generally refers to a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." Corollary, the abuse of discretion must be patent and gross so as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law. [31] To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government. As aptly edified in the recent case of *Alberto v. CA*:[32]

> It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; **while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution** "**to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**." (Emphasis supplied; citations omitted)

In the foregoing context, the Court observes that grave abuse of discretion taints a public prosecutor's resolution if he arbitrarily disregards the jurisprudential parameters of probable cause. In particular, case law

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[31] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515.

[32] G.R. Nos. 182130 and 182132, June 19, 2013.

states that probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief and, as such, does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged.[33] As pronounced in *Reyes v. Pearlbank Securities, Inc.*:[34]

> **A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects**. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground **to engender a well-founded belief that a crime has been committed**, and **that the accused is probably guilty thereof and should be held for trial**. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[35] (Emphasis supplied)

Apropos thereto, for the public prosecutor to determine if there exists a well-founded belief that a crime has been committed, and that the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.[36]

With these precepts in mind, the Court proceeds to assess the specific incidents in this case.

B. Existence of probable cause on the part of Dangupon.

Records bear out that Dangupon admitted that he was the one who shot Tetet which eventually caused the latter's death. The Provincial Prosecutor, however, relieved him from indictment based mainly on the finding that the aforesaid act was done either in self-defense, defense of a stranger or in the performance of a lawful duty or exercise of a right of

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33 Id. (Citation omitted)
34 G.R. No. 171435, July 30, 2008, 560 SCRA 518.
35 Id. at 534-535.
36 *Ang-Abaya v. Ang*, G.R. No. 178511, December 4, 2008, 573 SCRA 129, 143.

office, respectively pursuant to paragraphs 1, 2, and 5, Article 11[37] of the RPC. The DOJ affirmed the Provincial Prosecutor's finding, adding further that Dangupon, as well as the other respondents, enjoys the constitutional presumption of innocence.

These findings are patently and grossly erroneous.

Records bear out facts and circumstances which show that the elements of murder – namely: (*a*) that a person was killed; (*b*) that the accused killed him; (*c*) that the killing was attended by any of the qualifying circumstances mentioned in Article 248[38] of the RPC; and (*d*) that the killing is not parricide or infanticide[39] – are, in all reasonable likelihood, present in Dangupon's case. As to the first and second elements, Dangupon himself admitted that he shot and killed Tetet. Anent the third element, there lies sufficient basis to suppose that the qualifying circumstance of treachery attended Tetet's killing in view of the undisputed fact that he was restrained by respondents and thereby, rendered defenseless.[40] Finally, with respect to the fourth element, Tetet's killing can neither be considered as parricide nor infanticide as the evidence is bereft of any indication that Tetet is related to Dangupon.

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[37] Art. 11. *Justifying circumstances.* - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:
First. Unlawful aggression;
Second. Reasonable necessity of the means employed to prevent or repel it;
Third. Lack of sufficient provocation on the part of the person defending himself.
2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

x x x x

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

x x x x

[38] Art. 248. *Murder*. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity.
2. In consideration of a price, reward, or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[39] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 746.

[40] In any case, if the said circumstance or any of the qualifying circumstances stated in Article 248 of the RPC are not established during trial, Dangupon may still be convicted for the lesser offense of homicide as its elements are necessarily included in the crime of murder. (See *SSgt. Pacoy v. Hon. Cajigal*, 560 Phil. 598, 614 [2007].)

At this juncture, it must be noted that Dangupon's theories of self-defense/defense of a stranger and performance of an official duty are not clear and convincing enough to exculpate him at this stage of the proceedings considering the following circumstances: (*a*) petitioner's version of the facts was corroborated by witnesses Adelaida Samillano and Rolando Corcotchea who stated, among others, that they saw Tetet raise his hands as a sign of surrender but was still mauled by armed persons[41] (hence, the presence of unlawful aggression on the part of Tetet and the lack of any sufficient provocation on the part of Dangupon,[42] the actual motive of Tetet's companions,[43] and the lawfulness of the act[44] are put into question); (*b*) it was determined that Tetet was handcuffed[45] when he was boarded on the military jeep (hence, the supposition that Tetet was actually restrained of his movement begs the questions as to how he could have, in this state, possibly stole the grenade from Abordo); and (*c*) petitioner's evidence show that Tetet suffered from lacerations and multiple gunshot wounds,[46] the shots causing which having been fired at a close distance[47] (hence, the reasonable necessity of the means employed to prevent or repel[48] Tetet's supposed unlawful aggression, and whether the injury committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right[49] are, among others, also put into question). Given the foregoing, Dangupon's defenses are better off scrutinized within the confines of a criminal trial.

To add, neither can the dismissal of the murder charge against Dangupon be sustained in view of his presumption of innocence. Jurisprudence holds that when the accused admits killing the victim, but invokes a justifying circumstance, the constitutional presumption of innocence is effectively waived and the burden of proving the existence of such circumstance shifts to the accused.[50] The rule regarding an accused's

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41 *Rollo*, p. 39.

42 "x x x For self-defense to prevail, three (3) requisites must concur, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself." (*People v. De Gracia*, 332 Phil. 226, 235 [1996].)

43 "x x x [T]he elements of defense of stranger are: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) the person defending be not induced by revenge, resentment, or other evil motive." (*Masipequiña v. CA*, 257 Phil. 710, 719 [1989].)

44 "x x x [The] x x x case would have fallen under No. 5 of Article 11 [of the RPC, i.e., the justifying circumstance of fulfillment of a duty or in the lawful exercise of a right or office] if the two conditions therefor, *viz.*: (1) that the accused acted in the performance of a duty or in the lawful exercise of a right or office and (2) that the injury or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office, concurred." (*Lacanilao v. CA*, G.R. No. L-34940 June 27, 1988, 162 SCRA 563, 566.)

45 *Rollo*, p. 41.

46 See id. at 68. Based on the medical certificate dated February 4, 2002 issued by Dr. Gamilla of the San Sebastian District Hospital, Tetet was found to have sustained two lacerated wounds at the frontal area, a linear abrasion in the anterior chest and five gunshot wounds in different parts of his body.

47 See id. at 67. Dangupon himself admitted that the shots were fired at a distance of, more or less, one yard ("*isang dipa*").

48 See *People v. De Gracia*, supra note 42.

49 See *Lacanilao v. CA*, supra note 44.

50 See *People v. Spo2. Magnabe, Jr.*, 435 Phil. 374, 391 (2002).

admission of the victim's killing has been articulated in *Ortega v. Sandiganbayan*, to wit:[51]

> Well settled is the rule that where the accused had admitted that he is the author of the death of the victim and his defense anchored on self-defense, it is incumbent upon him to prove this justifying circumstance to the satisfaction of the court. To do so, he must rely on the strength of his own evidence and not on the weakness of the prosecution, for the accused himself had admitted the killing. **The burden is upon the accused to prove clearly and sufficiently the elements of self-defense, being an affirmative allegation, otherwise the conviction of the accused is inescapable**.[52] (Emphasis and underscoring supplied)

Therefore, due to the ostensible presence of the crime charged and considering that Dangupon's theories of self-defense/defense of a stranger and lawful performance of one's duty and the argument on presumption of innocence are, under the circumstances, not compelling enough to overcome a finding of probable cause, the Court finds that the DOJ gravely abused its discretion in dismissing the case against Dangupon. Consequently, the reversal of the CA ruling with respect to the latter is in order.

C. Existence of probable cause on the part of Fortuno and Abordo.

In similar regard, the Court also finds that grave abuse of discretion tainted the dismissal of the charges of murder against Fortuno and Abordo.

To elucidate, while petitioner has failed to detail the exact participation of Fortuno and Abordo in the death of Tetet, it must be noted that the peculiar nature of an extralegal killing negates the former an opportunity to proffer the same. It is of judicial notice that extralegal killings are ordinarily executed in a clandestine manner, and, as such, its commission is largely concealed from the public view of any witnesses. Notably, unlike in rape cases wherein the victim – albeit ravaged in the dark – may choose to testify, and whose testimony is, in turn, given great weight and credence sufficient enough for a conviction,[53] the victim of an extralegal killing is silenced by death and therefore, the actual participation of his assailants is hardly disclosed. As these legal realities generally mire extralegal killing cases, the Court observes that such cases should be resolved with a more

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51 G.R. No. 57664 February 8, 1989, 170 SCRA 38.

52 Id. at 42.

53 "Rape is essentially an offense of secrecy, not generally attempted except in dark or deserted and secluded places away from prying eyes, and the crime usually commences solely upon the word of the offended woman herself and conviction invariably turns upon her credibility, as the prosecution's single witness of the actual occurrence." (*People v. Molleda*, 462 Phil. 461, 468 [2003].)

circumspect analysis of the incidental factors surrounding the same, take for instance the actual or likely presence of the persons charged at the place and time when the killing was committed, the manner in which the victim was executed (of which the location of the place and the time in which the killing was done may be taken into consideration), or the possibility that the victim would have been easily overpowered by his assailants (of which the superior number of the persons detaining the victim and their ability to wield weapons may be taken into consideration).

In the present case, the existence of probable cause against Fortuno and Abordo is justified by the circumstances on record which, if threaded together, would lead a reasonably discreet and prudent man to believe that they were also probably guilty of the crime charged. These circumstances are as follows: (*a*) Fortuno and Abordo were with Dangupon during the time the latter killed Tetet[54] in an undisclosed place along the Viga River; (*b*) Tetet was apprehended, taken into custody and boarded on a military jeep by the group of armed elements of which Fortuno and Abordo belonged to;[55] (*c*) as earlier mentioned, Tetet was handcuffed[56] when he was boarded on the military jeep and, in effect, restrained of his movement when he supposedly stole the grenade from Abordo; and (*d*) also, as previously mentioned, Tetet suffered from lacerations and multiple gunshot wounds, [57] and that the shots causing the same were fired at a close distance.[58] Evidently, the confluence of the above-stated circumstances and legal realities point out to the presence of probable cause for the crime of murder against Fortuno and Abordo. Hence, the dismissal of the charges against them was – similar to Dangupon – improper. As such, the CA's ruling must also be reversed with respect to Fortuno and Abordo.

D. Lack of probable cause on the part of Villar, Lara, Acaylar, and Balicol.

The Court, however, maintains a contrary view with respect to the determination of lack of probable cause on the part of Villar, Lara, Acaylar and Balicol.

Records are bereft of any showing that the aforementioned respondents – as opposed to Dangupon, Fortuno, and Abordo – directly participated in the killing of Tetet at the Viga River. As observed by the DOJ, Villar, Lara, Acaylar, and Balicol were not with Tetet at the time he was shot; thus, they could not have been responsible for his killing. Neither

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54 *Rollo*, p. 96.
55 Id. at 73.
56 Id. at 41.
57 See id. at 68.
58 See id. at 67.

could they be said to have acted in conspiracy with the other respondents since it was not demonstrated how they concurred in or, in any way, participated towards the unified purpose of consummating the same act. It is well-settled that conspiracy exists when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed.[59] Therefore, finding no direct participation or conspiracy on the part of Villar, Lara, Acaylar, and Balicol, the Court holds that the DOJ did not gravely abuse its discretion in affirming the Provincial Prosecutor's dismissal of the charges against them. In this respect, the CA's Decision must stand.

As a final word, the Court can only bewail the loss of a family member through the unfortunate course of an extralegal killing. The historical prevalence of this deplorable practice has even led to the inception and eventual adoption of the Rules on *Amparo*[60] to better protect the sacrosanct right of every person to his life and liberty and not to be deprived of such without due process of law. Despite the poignancy natural to every case advanced as an extralegal killing, the Court, as in all courts of law, is mandated to operate on institutional impartiality – that is, its every ruling, notwithstanding the sensitivity of the issue involved, must be borne only out of the facts of the case and scrutinized under the lens of the law. It is pursuant to this overarching principle that the Court has dealt with the killing of Tetet and partly grants the present petition. In fine, the case against Dangupon, Fortuno, and Abordo must proceed and stand the muster of a criminal trial. On the other hand, the dismissal of the charges against Villar, Lara, Acaylar, and Balicol is sustained.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. SP No. 110110 is **REVERSED** and **SET ASIDE**. The Resolution dated March 10, 2003 of the Provincial Prosecutor and the Resolution dated November 27, 2008 of the Department of Justice in I.S. No. 2002-414 are **NULLIFIED** insofar as respondents PO1 Leo T. Dangupon, 1st Lt. Philip Fortuno, and Cpl.

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59 *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 605.

60 A historical exegesis of the present *Amparo* rules is found in the landmark case of *Secretary of National Defense v. Manalo* (G.R. No. 180906, October 7, 2008, 568 SCRA 1, 38-39), the pertinent portions of which read:

> On October 24, 2007, the Court promulgated the *Amparo* Rule "in light of the prevalence of extralegal killing and enforced disappearances." It was an exercise for the first time of the Court's expanded power to promulgate rules to protect our people's constitutional rights, which made its maiden appearance in the 1987 Constitution in response to the Filipino experience of the martial law regime. As the *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law."

Edilberto Abordo are concerned. Accordingly, the Department of Justice is **DIRECTED** to issue the proper resolution in order to charge the above-mentioned respondents in accordance with this Decision.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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