



Republic of the Philippines
Supreme Court
Manila

EN BANC

SATURNINO C. OCAMPO,
Petitioner,

G.R. No. 176830

- versus -

HON. EPHREM S. ABANDO, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18, CESAR M. MERIN, in his capacity as Approving Prosecutor and Officer-in-Charge, ROSULO U. VIVERO, in his capacity as Investigating Prosecutor, RAUL M. GONZALEZ, in his capacity as Secretary of the Department of Justice,

Respondents.

X ----- X

RANDALL B. ECHANIS,
Petitioner,

G.R. No. 185587

- versus -

HON. THELMA BUNYI-MEDINA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, HON. EPHREM S. ABANDO, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18, CESAR M. MERIN, in his capacity as Approving Prosecutor and Officer-in-Charge, ROSULO U. VIVERO, in his capacity as Investigating Prosecutor, RAUL M. GONZALEZ, in his capacity as Secretary of the Department of Justice,

Respondents.

X ----- X

RAFAEL G. BAYLOSIS,
Petitioner,

G.R. No. 185636

- versus -

HON. THELMA BUNYI-MEDINA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, HON. EPHREM S. ABANDO, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18, CESAR M. MERIN, in his capacity as Approving Prosecutor and Officer-in-Charge, ROSULO U. VIVERO, in his capacity as Investigating Prosecutor, RAUL M. GONZALEZ, in his capacity as Secretary of the Department of Justice,

Respondents.

X ----- X

VICENTE P. LADLAD,
Petitioner,

G.R. No. 190005

Present:

- versus -

HON. THELMA BUNYI-MEDINA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, and the PEOPLE OF THE PHILIPPINES,

Respondents.

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

Promulgated:

FEBRUARY 11, 2014

X ----- X

DECISION

SERENO, *CJ*:

On 26 August 2006, a mass grave was discovered by elements of the 43rd Infantry Brigade of the Philippine Army at *Sitio Sapang Daco, Barangay Kaulisihan, Inopacan, Leyte*.¹ The mass grave contained skeletal remains of individuals believed to be victims of “Operation Venereal Disease” (Operation VD) launched by members of the Communist Party of the Philippines/New People’s Army/National Democratic Front of the Philippines (CPP/NPA/NDFP) to purge their ranks of suspected military informers.

While the doctrine of hierarchy of courts normally precludes a direct invocation of this Court’s jurisdiction, we take cognizance of these petitions considering that petitioners have chosen to take recourse directly before us and that the cases are of significant national interest.

Petitioners have raised several issues, but most are too insubstantial to require consideration. Accordingly, in the exercise of sound judicial discretion and economy, this Court will pass primarily upon the following:

1. Whether petitioners were denied due process during preliminary investigation and in the issuance of the warrants of arrest.
2. Whether the murder charges against petitioners should be dismissed under the political offense doctrine.

ANTECEDENT FACTS

These are petitions for certiorari and prohibition² seeking the annulment of the orders and resolutions of public respondents with regard to the indictment and issuance of warrants of arrest against petitioners for the crime of multiple murder.

Police Chief Inspector George L. Almaden (P C/Insp. Almaden) of the Philippine National Police (PNP) Regional Office 8 and Staff Judge Advocate Captain Allan Tiu (Army Captain Tiu) of the 8th Infantry Division

¹ Also allegedly found from 2009 to 2012 were more mass grave sites in Gubat, Sorsogon; Camalig, Albay; and Labo, Camarines Norte – all in the Bicol Region [<http://www.interaksyon.com/article/38278/photos--bones-in-npa-mass-grave-dont-easily-surrender-names-of-victims> (Last accessed on 13 January 2014)].

On 21 July 2012, a mass grave was found in San Francisco, Quezon [<http://newsinfo.inquirer.net/233887/remains-found-in-quezon-mass-grave-include-a-pregnant-rebel-army-exec> (Last accessed on 13 January 2014)].

² Except G.R. No. 190005, which is only a petition for certiorari.

of the Philippine Army sent 12 undated letters to the Provincial Prosecutor of Leyte through Assistant Provincial Prosecutor Rosulo U. Vivero (Prosecutor Vivero).³ The letters requested appropriate legal action on 12 complaint-affidavits attached therewith accusing 71 named members of the Communist Party of the Philippines/New People's Army/National Democratic Front of the Philippines (CPP/NPA/NDFP) of murder, including petitioners herein along with several other unnamed members.

The letters narrated that on 26 August 2006, elements of the 43rd Infantry Brigade of the Philippine Army discovered a mass grave site of the CPP/NPA/NDFP at *Sitio Sapang Daco, Barangay Kaulisihan, Inopacan, Leyte*.⁴ Recovered from the grave site were 67 severely deteriorated skeletal remains believed to be victims of Operation VD.⁵

The PNP Scene of the Crime Operation (SOCO) Team based in Regional Office 8 was immediately dispatched to the mass grave site to conduct crime investigation, and to collect, preserve and analyze the skeletal remains.⁶ Also, from 11-17 September 2006, an investigation team composed of intelligence officers, and medico-legal and DNA experts, conducted forensic crime analysis and collected from alleged relatives of the victims DNA samples for matching.⁷

The Initial Specialist Report⁸ dated 18 September 2006 issued by the PNP Crime Laboratory in Camp Crame, Quezon City, was inconclusive with regard to the identities of the skeletal remains and even the length of time that they had been buried. The report recommended the conduct of further tests to confirm the identities of the remains and the time window of death.⁹

However, in a Special Report¹⁰ dated 2 October 2006, the Case Secretariat of the Regional and National Inter-Agency Legal Action Group (IALAG) came up with the names of ten (10) possible victims after comparison and examination based on testimonies of relatives and witnesses.¹¹

The 12 complaint-affidavits were from relatives of the alleged victims of Operation VD. All of them swore that their relatives had been abducted or last seen with members of the CPP/NPA/NDFP and were never seen again.

³ *Rollo* (G.R. No. 176830), pp. 135-269.

⁴ *Id.* at 139.

⁵ *Id.* at 336.

⁶ *Id.*

⁷ *Id.* at 337.

⁸ *Id.* at 424-427.

⁹ *Id.* at 427.

¹⁰ *Id.* at 336-338.

¹¹ *Id.* at 337-338.

They also expressed belief that their relatives' remains were among those discovered at the mass grave site.

Also attached to the letters were the affidavits of Zacarias Piedad,¹² Leonardo C. Tanaid, Floro M. Tanaid, Numeriano Beringuel, Glicerio Roluna and Veronica P. Tabara. They narrated that they were former members of the CPP/NPA/NDFP.¹³ According to them, Operation VD was ordered in 1985 by the CPP/NPA/NDFP Central Committee.¹⁴ Allegedly, petitioners Saturnino C. Ocampo (Ocampo),¹⁵ Randall B. Echanis (Echanis),¹⁶ Rafael G. Baylosis (Baylosis),¹⁷ and Vicente P. Ladlad (Ladlad)¹⁸ were then members of the Central Committee.

According to these former members, four sub-groups were formed to implement Operation VD, namely, (1) the Intel Group responsible for gathering information on suspected military spies and civilians who would not support the movement; (2) the Arresting Group charged with their arrests; (3) the Investigation Group which would subject those arrested to questioning; and (4) the Execution Group or the "cleaners" of those confirmed to be military spies and civilians who would not support the movement.¹⁹

From 1985 to 1992, at least 100 people had been abducted, hog-tied, tortured and executed by members of the CPP/NPA/NDFP²⁰ pursuant to Operation VD.²¹

On the basis of the 12 letters and their attachments, Prosecutor Vivero issued a subpoena requiring, among others, petitioners to submit their counter-affidavits and those of their witnesses.²² Petitioner Ocampo submitted his counter-affidavit.²³ Petitioners Echanis²⁴ and Baylosis²⁵ did not file counter-affidavits because they were allegedly not served the copy of the complaint and the attached documents or evidence. Counsel of petitioner Ladlad made a formal entry of appearance on 8 December 2006 during the preliminary investigation.²⁶ However, petitioner Ladlad did not file a counter-affidavit because he was allegedly not served a subpoena.²⁷

¹² With Supplemental Affidavit dated 12 January 2007; *id.* at 276-278.

¹³ *Id.* at 273, 287, 296, 309, 318 and 329.

¹⁴ *Id.* at 289.

¹⁵ *Id.* at 288, 310, 319 and 329.

¹⁶ *Id.* at 319.

¹⁷ *Id.* at 310, 319 and 329.

¹⁸ *Id.* at 310 and 319.

¹⁹ *Id.* at 289-290.

²⁰ *Id.* at 89.

²¹ *Id.* at 291.

²² *Id.* at 91.

²³ *Id.*

²⁴ *Rollo* (G.R. No. 185587), p. 10.

²⁵ *Rollo* (G.R. No. 185636), p. 14.

²⁶ *Rollo* (G.R. No. 190005), p. 51.

²⁷ *Id.* at 52.

In a Resolution²⁸ dated 16 February 2007, Prosecutor Vivero recommended the filing of an Information for 15 counts of multiple murder against 54 named members of the CPP/NPA/NDFP, including petitioners herein, for the death of the following: 1) Juanita Aviola, 2) Concepcion Aragon, 3) Gregorio Eras, 4) Teodoro Recones, Jr., 5) Restituto Ejoc, 6) Rolando Vasquez, 7) Junior Milyapis, 8) Crispin Dalmacio, 9) Zacarias Casil, 10) Pablo Daniel, 11) Romeo Tayabas, 12) Domingo Napoles, 13) Ciriaco Daniel, 14) Crispin Prado, and 15) Ereberto Prado.²⁹

Prosecutor Vivero also recommended that Zacarias Piedad, Leonardo Tanaid, Numeriano Beringuel and Glecerio Roluna be dropped as respondents and utilized as state witnesses, as their testimonies were vital to the success of the prosecution.³⁰ The Resolution was silent with regard to Veronica Tabara.

The Information was filed before the Regional Trial Court (RTC) Hilongos, Leyte, Branch 18 (RTC Hilongos, Leyte) presided by Judge Ephrem S. Abando (Judge Abando) on 28 February 2007, and docketed as Criminal Case No. H-1581.³¹ Petitioner Ocampo filed an Ex Parte Motion to Set Case for Clarificatory Hearing dated 5 March 2007 prior to receiving a copy of the Resolution recommending the filing of the Information.³²

On 6 March 2007, Judge Abando issued an Order finding probable cause “in the commission by all mentioned accused of the crime charged.”³³ He ordered the issuance of warrants of arrest against them with no recommended bail for their temporary liberty.³⁴

On 16 March 2007, petitioner Ocampo filed before us this special civil action for certiorari and prohibition under Rule 65 of the Rules of Court and docketed as G.R. No. 176830 seeking the annulment of the 6 March 2007 Order of Judge Abando and the 16 February 2007 Resolution of Prosecutor Vivero.³⁵ The petition prayed for the unconditional release of petitioner Ocampo from PNP custody, as well as the issuance of a temporary restraining order/ writ of preliminary injunction to restrain the conduct of further proceedings during the pendency of the petition.³⁶

²⁸ *Rollo* (G.R. No. 176830), pp. 88-94.

²⁹ *Id.* at 93.

³⁰ *Id.*

³¹ *Id.* at 84-87.

³² *Id.* at 96-99. Petitioner Ocampo received a copy of the Resolution on 12 March 2007.

³³ *Id.* at 82.

³⁴ *Id.*

³⁵ *Id.* at 3-81.

³⁶ *Id.* at 77.

Petitioner Ocampo argued that a case for rebellion against him and 44 others (including petitioners Echanis and Baylisis³⁷ and Ladlad³⁸) docketed as Criminal Case No. 06-944 was then pending before the RTC Makati, Branch 150 (RTC Makati).³⁹ Putting forward the political offense doctrine, petitioner Ocampo argues that common crimes, such as murder in this case, are already absorbed by the crime of rebellion when committed as a necessary means, in connection with and in furtherance of rebellion.⁴⁰

We required⁴¹ the Office of the Solicitor General (OSG) to comment on the petition and the prayer for the issuance of a temporary restraining order/ writ of preliminary injunction, and set⁴² the case for oral arguments on 30 March 2007. The OSG filed its Comment on 27 March 2007.⁴³

The following were the legal issues discussed by the parties during the oral arguments:

1. Whether the present petition for certiorari and prohibition is the proper remedy of petitioner Ocampo;
2. Assuming it is the proper remedy, whether he was denied due process during preliminary investigation and in the issuance of the warrant of arrest;
3. Whether the murder charges against him are already included in the rebellion charge against him in the RTC.⁴⁴

Afterwards, the parties were ordered to submit their memoranda within 10 days.⁴⁵ On 3 April 2007, the Court ordered the provisional release of petitioner Ocampo under a ₱100,000 cash bond.⁴⁶

Acting on the observation of the Court during the oral arguments that the single Information filed before the RTC Hilongos, Leyte was defective for charging 15 counts of murder, the prosecution filed a Motion to Admit Amended Information and New Informations on 11 April 2007.⁴⁷ In an Order dated 27 July 2007, Judge Abando held in abeyance the resolution

³⁷ *Rollo* (G.R. No. 185587), p. 451.

³⁸ *Rollo* (G.R. No. 190005), p. 75.

³⁹ *Rollo* (G.R. No. 176830), p. 59. On 1 June 2007, the Supreme Court granted the petitions in *Ladlad v. Velasco* – G.R. Nos. 172070-72, 172074-76 and 175013 – in which the RTC of Makati, Branch 150, was ordered to dismiss Criminal Case Nos. 06-452 and 06-944.

⁴⁰ *Id.* at 62.

⁴¹ *Id.* at 515-A – 515-B.

⁴² *Id.* at 541-542.

⁴³ *Id.* at 554-A.

⁴⁴ *Id.* at 554-C – 554-D.

⁴⁵ *Id.* at 554-D.

⁴⁶ *Id.* at 557-558.

⁴⁷ *Rollo* (G.R. No. 185587), pp. 426-427.

thereof and effectively suspended the proceedings during the pendency of G.R. No. 176830 before this Court.⁴⁸

While the proceedings were suspended, petitioner Echanis was arrested on 28 January 2008 by virtue of the warrant of arrest issued by Judge Abando on 6 March 2007.⁴⁹ On 1 February 2008, petitioners Echanis and Baylosis filed a Motion for Judicial Reinvestigation/ Determination of Probable Cause with Prayer to Dismiss the Case Outright and Alternative Prayer to Recall/ Suspend Service of Warrant.⁵⁰

On 30 April 2008, Judge Abando issued an Order denying the motion.⁵¹ Petitioners Echanis and Baylosis filed a Motion for Reconsideration⁵² dated 30 May 2008, but before being able to rule thereon, Judge Abando issued an Order dated 12 June 2008 transmitting the records of Criminal Case No. H-1581 to the Office of the Clerk of Court, RTC Manila.⁵³ The Order was issued in compliance with the Resolution dated 23 April 2008 of this Court granting the request of then Secretary of Justice Raul Gonzales to transfer the venue of the case.

The case was re-raffled to RTC Manila, Branch 32 (RTC Manila) presided by Judge Thelma Bunyi-Medina (Judge Medina) and re-docketed as Criminal Case No. 08-262163.⁵⁴ Petitioner Echanis was transferred to the PNP Custodial Center in Camp Crame, Quezon City. On 12 August 2008, petitioners Echanis and Baylosis filed their Supplemental Arguments to Motion for Reconsideration.⁵⁵

In an Order⁵⁶ dated 27 October 2008, Judge Medina suspended the proceedings of the case pending the resolution of G.R. No. 176830 by this Court.

On 18 December 2008, petitioner Ladlad filed with the RTC Manila a Motion to Quash and/or Dismiss.⁵⁷

On 23 December 2008, petitioner Echanis filed before us a special civil action for certiorari and prohibition under Rule 65 of the Rules of Court seeking the annulment of the 30 April 2008 Order of Judge Abando and the

⁴⁸ Id. at 428-429.

⁴⁹ Id. at 18.

⁵⁰ Id. at 430-460.

⁵¹ Id. at 69-73.

⁵² Id. at 461-485.

⁵³ Id. at 486.

⁵⁴ Id. at 19.

⁵⁵ Id. at 487-519.

⁵⁶ Id. at 64-68.

⁵⁷ *Rollo* (G.R. No. 190005), pp. 162-218.

27 October 2008 Order of Judge Medina.⁵⁸ The petition, docketed as G.R. No. 185587, prayed for the unconditional and immediate release of petitioner Echanis, as well as the issuance of a temporary restraining order/writ of preliminary injunction to restrain his further incarceration.⁵⁹

On 5 January 2009, petitioner Baylosis filed before us a special civil action for certiorari and prohibition under Rule 65 of the Rules of Court also seeking the annulment of the 30 April 2008 Order of Judge Abando and the 27 October 2008 Order of Judge Medina.⁶⁰ The petition, docketed as G.R. No. 185636, prayed for the issuance of a temporary restraining order/writ of preliminary injunction to restrain the implementation of the warrant of arrest against petitioner Baylosis.⁶¹

The Court consolidated G.R. Nos. 185587 and 185636 on 12 January 2009.⁶²

On 3 March 2009, the Court ordered the further consolidation of these two cases with G.R. No. 176830.⁶³ We required⁶⁴ the OSG to comment on the prayer for petitioner Echanis's immediate release, to which the OSG did not interpose any objection on these conditions: that the temporary release shall only be for the purpose of his attendance and participation in the formal peace negotiations between the Government of the Republic of the Philippines (GRP) and the CPP/NPA/NDFP, set to begin in August 2009; and that his temporary release shall not exceed six (6) months.⁶⁵ The latter condition was later modified, such that his temporary liberty shall continue for the duration of his actual participation in the peace negotiations.⁶⁶

On 11 August 2009, the Court ordered the provisional release of petitioner Echanis under a ₱100,000 cash bond, for the purpose of his participation in the formal peace negotiations.⁶⁷

Meanwhile, the Department of Justice (DOJ) filed its Opposition⁶⁸ to petitioner Ladlad's motion to quash before the RTC Manila. The trial court conducted a hearing on the motion on 13 February 2009.⁶⁹

⁵⁸ *Rollo*, (G.R. No. 185587), pp. 3-63.

⁵⁹ *Id.* at 56.

⁶⁰ *Rollo* (G.R. No. 185636), pp. 7-71.

⁶¹ *Id.* at 64.

⁶² *Id.* at 564.

⁶³ *Rollo* (G.R. No. 185587), p. 587.

⁶⁴ *Id.* at 606-607.

⁶⁵ *Rollo* (G.R. No. 176830), pp. 736-740.

⁶⁶ *Id.* at 1029-1032.

⁶⁷ *Id.* at 742-743.

⁶⁸ *Rollo* (G.R. No. 190005), pp. 331-340.

⁶⁹ *Id.* at 347-348.

On 6 May 2009, Judge Medina issued an Order⁷⁰ denying the motion to quash. The motion for reconsideration filed by petitioner Ladlad was also denied on 27 August 2009.⁷¹

On 9 November 2009, petitioner Ladlad filed before us a special civil action for certiorari under Rule 65 of the Rules of Court seeking the annulment of the 6 May 2009 and 27 August 2009 Orders of Judge Medina.⁷² The petition was docketed as G.R. No. 190005.

On 11 January 2010, we ordered the consolidation of G.R. No. 190005 with G.R. Nos. 176830, 185587 and 185636.⁷³ We also required the OSG to file its comment thereon. The OSG submitted its Comment⁷⁴ on 7 May 2010.

On 27 July 2010, we likewise required the OSG to file its Comment in G.R. Nos. 185636 and 185587.⁷⁵ These Comments were filed by the OSG on 13 December 2010⁷⁶ and on 21 January 2011,⁷⁷ respectively. Petitioners Echanis and Baylosis filed their Consolidated Reply⁷⁸ on 7 June 2011.

On 2 May 2011, petitioner Ladlad filed an Urgent Motion to Fix Bail.⁷⁹ On 21 July 2011, petitioner Baylosis filed A Motion to Allow Petitioner to Post Bail.⁸⁰ The OSG interposed no objection to the grant of a ₱100,000 cash bail to them considering that they were consultants of the NDFP negotiating team, which was then holding negotiations with the GRP peace panel for the signing of a peace accord.⁸¹

On 17 January 2012, we granted the motions of petitioners Ladlad and Baylosis and fixed their bail in the amount of ₱100,000, subject to the condition that their temporary release shall be limited to the period of their actual participation in the peace negotiations.⁸²

Petitioner Ladlad filed his Reply⁸³ to the OSG Comment on 18 January 2013.

⁷⁰ Id. at 108-111.

⁷¹ Id. at 112.

⁷² Id. at 3-107.

⁷³ Id. at 860-861.

⁷⁴ Id. at 879-922.

⁷⁵ Id. at 932-933.

⁷⁶ Id. at 940-1003.

⁷⁷ *Rollo* (G.R. No. 185587), pp. 807-851.

⁷⁸ *Rollo* (G.R. No. 185636), pp. 1363-1391.

⁷⁹ *Rollo* (G.R. No. 190005), pp. 1006-1024.

⁸⁰ *Rollo* (G.R. No. 185636), pp. 1399-1402.

⁸¹ *Rollo* (G.R. No. 190005), p. 1046; *rollo* (G.R. No. 185636), p. 1419.

⁸² *Rollo* (G.R. No. 190005), pp. 1050-1053.

⁸³ Id. at 1073-1116.

OUR RULING

Petitioners were accorded due process during preliminary investigation and in the issuance of the warrants of arrest.

A. Preliminary Investigation

A preliminary investigation is “not a casual affair.”⁸⁴ It is conducted to protect the innocent from the embarrassment, expense and anxiety of a public trial.⁸⁵ While the right to have a preliminary investigation before trial is statutory rather than constitutional, it is a substantive right and a component of due process in the administration of criminal justice.⁸⁶

In the context of a preliminary investigation, the right to due process of law entails the opportunity to be heard.⁸⁷ It serves to accord an opportunity for the presentation of the respondent’s side with regard to the accusation. Afterwards, the investigating officer shall decide whether the allegations and defenses lead to a reasonable belief that a crime has been committed, and that it was the respondent who committed it. Otherwise, the investigating officer is bound to dismiss the complaint.

“The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense.”⁸⁸ What is proscribed is lack of opportunity to be heard.⁸⁹ Thus, one who has been afforded a chance to present one’s own side of the story cannot claim denial of due process.⁹⁰

Petitioners Echanis and Baylosis allege that they did not receive a copy of the complaint and the attached documents or evidence.⁹¹ Petitioner Ladlad claims that he was not served a subpoena due to the false address indicated in the 12 undated letters of P C/Insp. Almaden and Army Captain Tiu to Prosecutor Vivero.⁹² Furthermore, even though his counsels filed their formal entry of appearance before the Office of the Prosecutor, petitioner Ladlad was still not sent a subpoena through his counsels’ addresses.⁹³ Thus, they were deprived of the right to file counter-affidavits.

⁸⁴ *Ang-Abaya v. Ang*, G.R. No. 178511, 4 December 2008, 573 SCRA 129, 146.

⁸⁵ *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73, 93.

⁸⁶ *Id.*

⁸⁷ *Santos v. People*, G.R. No. 173176, 26 August 2008, 563 SCRA 341, 369.

⁸⁸ *Kuizon v. Desierto*, 406 Phil. 611, 630 (2001).

⁸⁹ *Id.*

⁹⁰ *Pascual v. People*, 547 Phil. 620, 627 (2007).

⁹¹ *Rollo* (G.R. No. 185587), p. 31; *rollo* (G.R. No. 185636), p. 41.

⁹² *Rollo* (G.R. No. 190005), pp. 49-50.

⁹³ *Id.* at 51-52.

Petitioner Ocampo claims that Prosecutor Vivero, in collusion with P C/Insp. Almaden and Army Captain Tiu, surreptitiously inserted the Supplemental Affidavit of Zacarias Piedad in the records of the case without furnishing petitioner Ocampo a copy.⁹⁴ The original affidavit of Zacarias Piedad dated 14 September 2006 stated that a meeting presided by petitioner Ocampo was held in 1984, when the launching of Operation VD was agreed upon.⁹⁵ Petitioner Ocampo refuted this claim in his Counter-affidavit dated 22 December 2006 stating that he was in military custody from October 1976 until his escape in May 1985.⁹⁶ Thereafter, the Supplemental Affidavit of Zacarias Piedad dated 12 January 2007 admitted that he made a mistake in his original affidavit, and that the meeting actually took place in June 1985.⁹⁷ Petitioner Ocampo argues that he was denied the opportunity to reply to the Supplemental Affidavit by not being furnished a copy thereof.

Petitioner Ocampo also claims that he was denied the right to file a motion for reconsideration or to appeal the Resolution of Prosecutor Vivero, because the latter deliberately delayed the service of the Resolution by 19 days, effectively denying petitioner Ocampo his right to due process.⁹⁸

As to the claim of petitioners Echanis and Baylosis, we quote the pertinent portion of Prosecutor Vivero's Resolution, which states:

In connection with the foregoing and pursuant to the Revised Rules of Criminal Procedure[,] the respondents were issued and served with Subpoena at their last known address for them to submit their counter-affidavits and that of their witnesses.

Majority of the respondents did not submit their counter-affidavits because they could no longer be found in their last known address, per return of the subpoenas. On the other hand, Saturnino Ocampo @ Satur, Fides Lim, Maureen Palejaro and Ruben Manatad submitted their Counter-Affidavits. However, Vicente Ladlad and Jasmin Jerusalem failed to submit the required Counter Affidavits in spite entry of appearance by their respective counsels.⁹⁹

Section 3(d), Rule 112 of the Rules of Court, allows Prosecutor Vivero to resolve the complaint based on the evidence before him if a respondent could not be subpoenaed. As long as efforts to reach a respondent were made, and he was given an opportunity to present countervailing evidence, the preliminary investigation remains valid.¹⁰⁰ The rule was put in place in order to foil underhanded attempts of a respondent to delay the prosecution of offenses.¹⁰¹

⁹⁴ *Rollo* (G.R. No. 176830), pp. 75-76.

⁹⁵ *Id.* at 288-289.

⁹⁶ *Id.* at 45-46.

⁹⁷ *Id.* at 277.

⁹⁸ *Id.* at 74-75.

⁹⁹ *Id.* at 91.

¹⁰⁰ *Rodis, Sr. v. Sandiganbayan*, 248 Phil. 854, 859 (1988).

¹⁰¹ *Id.*

In this case, the Resolution stated that efforts were undertaken to serve subpoenas on the named respondents at their last known addresses. This is sufficient for due process. It was only because a majority of them could no longer be found at their last known addresses that they were not served copies of the complaint and the attached documents or evidence.

Petitioner Ladlad claims that his subpoena was sent to the nonexistent address “53 Sct. Rallos St., QC,”¹⁰² which had never been his address at any time.¹⁰³ In connection with this claim, we take note of the fact that the subpoena to Fides Lim, petitioner Ladlad’s wife,¹⁰⁴ was sent to the same address, and that she was among those mentioned in the Resolution as having timely submitted their counter-affidavits.

Despite supposedly never receiving a subpoena, petitioner Ladlad’s counsel filed a formal entry of appearance on 8 December 2006.¹⁰⁵ Prosecutor Vivero had a reason to believe that petitioner Ladlad had received the subpoena and accordingly instructed his counsel to prepare his defense.

Petitioner Ladlad, through his counsel, had every opportunity to secure copies of the complaint after his counsel’s formal entry of appearance and, thereafter, to participate fully in the preliminary investigation. Instead, he refused to participate.

We have previously cautioned that “litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.”¹⁰⁶ Having opted to remain passive during the preliminary investigation, petitioner Ladlad and his counsel cannot now claim a denial of due process, since their failure to file a counter-affidavit was of their own doing.

Neither do we find any merit in petitioner Ocampo’s allegation of collusion to surreptitiously insert the Supplemental Affidavit of Zacarias Piedad in the records. There was nothing surreptitious about the Supplemental Affidavit since it clearly alludes to an earlier affidavit and admits the mistake committed regarding the date of the alleged meeting. The date of the execution of the Supplemental Affidavit was also clearly stated. Thus, it was clear that it was executed after petitioner Ocampo had submitted his counter-affidavit. Should the case go to trial, that will provide petitioner Ocampo with the opportunity to question the execution of Zacarias Piedad’s Supplemental Affidavit.

¹⁰² *Rollo* (G.R. No. 176830), p. 136.

¹⁰³ *Rollo* (G.R. No. 190005), p. 51.

¹⁰⁴ *Id.* at 11.

¹⁰⁵ *Id.* at 51.

¹⁰⁶ *Balgami v. CA*, 487 Phil. 102, 115 (2004), citing *Salonga v. CA*, 336 Phil. 514 (1997).

Neither can we uphold petitioner Ocampo's contention that he was denied the right to be heard. For him to claim that he was denied due process by not being furnished a copy of the Supplemental Affidavit of Zacarias Piedad would imply that the entire case of the prosecution rested on the Supplemental Affidavit. The OSG has asserted that the indictment of petitioner Ocampo was based on the collective affidavits of several other witnesses¹⁰⁷ attesting to the allegation that he was a member of the CPP/NPA/NDFP Central Committee, which had ordered the launch of Operation VD.

As to his claim that he was denied the right to file a motion for reconsideration or to appeal the Resolution of Prosecutor Vivero due to the 19-day delay in the service of the Resolution, it must be pointed out that the period for filing a motion for reconsideration or an appeal to the Secretary of Justice is reckoned from the date of receipt of the resolution of the prosecutor, not from the date of the resolution. This is clear from Section 3 of the 2000 National Prosecution Service Rule on Appeal:

Sec. 3. Period to appeal. – The **appeal** shall be taken within **fifteen (15) days from receipt of the resolution**, or of the denial of the **motion for reconsideration/ reinvestigation** if one has been filed within **fifteen (15) days from receipt of the assailed resolution**. Only one motion for reconsideration shall be allowed. (Emphasis supplied)

Thus, when petitioner Ocampo received the Resolution of Prosecutor Vivero on 12 March 2007,¹⁰⁸ the former had until 27 March 2007 within which to file either a motion for reconsideration before the latter or an appeal before the Secretary of Justice. Instead, petitioner Ocampo chose to file the instant petition for certiorari directly before this Court on 16 March 2007.

B. Issuance of the Warrants of Arrest

Article III, Section 2 of the Constitution provides that “no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce.”

Petitioner Ocampo alleges that Judge Abando did not comply with the requirements of the Constitution in finding the existence of probable cause for the issuance of warrants of arrest against petitioners.¹⁰⁹

¹⁰⁷ *Rollo* (G.R. No. 176830), p. 587.

¹⁰⁸ *Id.* at 74.

¹⁰⁹ *Id.* at 21.

Probable cause for the issuance of a warrant of arrest has been defined as “such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested.”¹¹⁰ Although the Constitution provides that probable cause shall be determined by the judge after an examination under oath or an affirmation of the complainant and the witnesses, we have ruled that a hearing is not necessary for the determination thereof.¹¹¹ In fact, the judge’s personal examination of the complainant and the witnesses is not mandatory and indispensable for determining the aptness of issuing a warrant of arrest.¹¹²

It is enough that the judge personally evaluates the prosecutor’s report and supporting documents showing the existence of probable cause for the indictment and, on the basis thereof, issue a warrant of arrest; or if, on the basis of his evaluation, he finds no probable cause, to disregard the prosecutor’s resolution and require the submission of additional affidavits of witnesses to aid him in determining its existence.¹¹³

Petitioners Echanis and Baylosis claim that, had Judge Abando painstakingly examined the records submitted by Prosecutor Vivero, the judge would have inevitably dismissed the charge against them.¹¹⁴ Additionally, petitioner Ocampo alleges that Judge Abando did not point out facts and evidence in the record that were used as bases for his finding of probable cause to issue a warrant of arrest.¹¹⁵

The determination of probable cause for the issuance of warrants of arrest against petitioners is addressed to the sound discretion of Judge Abando as the trial judge.¹¹⁶ Further elucidating on the wide latitude given to trial judges in the issuance of warrants of arrest, this Court stated in *Sarigumba v. Sandiganbayan*¹¹⁷ as follows:

x x x. The trial court’s exercise of its judicial discretion should not, as a general rule, be interfered with in the absence of grave abuse of discretion. Indeed, *certiorari* will not lie to cure errors in the trial court’s appreciation of the evidence of the parties, the conclusion of facts it reached based on the said findings, as well as the conclusions of law. x x x.

Whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations

¹¹⁰ *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192, 199-200.

¹¹¹ *De los Santos-Reyes v. Montesa, Jr.*, 317 Phil. 101, 111 (1995).

¹¹² *People v. Grey*, G.R. No. 180109, 26 July 2010, 625 SCRA 523, 536.

¹¹³ *Supra* note 111.

¹¹⁴ *Rollo* (G.R. No. 185587), p. 27; *rollo* (G.R. No. 185636), p. 34.

¹¹⁵ *Rollo* (G.R. No. 176830), p. 64.

¹¹⁶ *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 720 (2005).

¹¹⁷ *Id.* at 720-721.

in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.

Here, the allegations of petitioners point to factual matters indicated in the affidavits of the complainants and witnesses as bases for the contention that there was no probable cause for petitioners' indictment for multiple murder or for the issuance of warrants for their arrest. As stated above, the trial judge's appreciation of the evidence and conclusion of facts based thereon are not interfered with in the absence of grave abuse of discretion. Again, "he sufficiently complies with the requirement of personal determination if he reviews the [I]nformation and the documents attached thereto, and on the basis thereof forms a belief that the accused is probably guilty of the crime with which he is being charged."¹¹⁸

Judge Abando's review of the Information and the supporting documents is shown by the following portion of the judge's 6 March 2007 Order:

On the evaluation of the Resolution and its Information as submitted and filed by the Provincial Prosecution of Leyte Province supported by the following documents: Affidavits of Complainants, Sworn Statements of Witnesses and other pertinent documents issued by the Regional Crime Laboratory Office, PNP, Region VIII and Camp Crame, Quezon City, pictures of the grave site and skeletal remains, this court has the findings [sic] of probable cause in the commission by all mentioned accused of the crime charged.¹¹⁹

At bottom, issues involving the finding of probable cause for an indictment and issuance of a warrant of arrest, as petitioners are doubtless aware, are primarily questions of fact that are normally not within the purview of a petition for certiorari,¹²⁰ such as the petitions filed in the instant consolidated cases.

The political offense doctrine is not a ground to dismiss the charge against petitioners prior to a determination by the trial court that the murders were committed in furtherance of rebellion.

Under the political offense doctrine, "common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime

¹¹⁸ *Cuevas v. Muñoz*, 401 Phil. 752, 773-774 (2000).

¹¹⁹ *Rollo* (G.R. No. 176830), p. 82.

¹²⁰ *Heirs of Marasigan v. Marasigan*, G.R. No. 156078, 14 March 2008, 548 SCRA 409, 443; *Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 529 (2003); *Reyes v. CA*, 378 Phil. 984, 990 (1999).

of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.”¹²¹

Any ordinary act assumes a different nature by being absorbed in the crime of rebellion.¹²² Thus, when a killing is committed in furtherance of rebellion, the killing is not homicide or murder. Rather, the killing assumes the political complexion of rebellion as its mere ingredient and must be prosecuted and punished as rebellion alone.

However, this is not to say that public prosecutors are obliged to consistently charge respondents with simple rebellion instead of common crimes. No one disputes the well-entrenched principle in criminal procedure that the institution of criminal charges, including whom and what to charge, is addressed to the sound discretion of the public prosecutor.¹²³

But when the political offense doctrine is asserted as a defense in the trial court, it becomes crucial for the court to determine whether the act of killing was done in furtherance of a political end, and for the political motive of the act to be conclusively demonstrated.¹²⁴

Petitioners aver that the records show that the alleged murders were committed in furtherance of the CPP/NPA/NDFP rebellion, and that the political motivation behind the alleged murders can be clearly seen from the charge against the alleged top leaders of the CPP/NPA/NDFP as co-conspirators.

We had already ruled that the burden of demonstrating political motivation must be discharged by the defense, since motive is a state of mind which only the accused knows.¹²⁵ The proof showing political motivation is adduced during trial where the accused is assured an opportunity to present evidence supporting his defense. It is not for this Court to determine this factual matter in the instant petitions.

As held in the case of *Office of the Provincial Prosecutor of Zamboanga Del Norte v. CA*,¹²⁶ if during trial, petitioners are able to show that the alleged murders were indeed committed in furtherance of rebellion, Section 14, Rule 110 of the Rules of Court provides the remedy, to wit:

¹²¹ *People v. Hernandez*, 99 Phil. 515, 541 (1956).

¹²² *People v. Lovedioro*, 320 Phil. 481, 489 (1995).

¹²³ *Glaxosmithkline Philippines, Inc. v. Malik*, 530 Phil. 662 (2006); *Punzalan v. Dela Peña*, 478 Phil. 771 (2004); *Potot v. People*, 432 Phil. 1028 (2002).

¹²⁴ *Supra* note 122.

¹²⁵ *Id.*

¹²⁶ 401 Phil. 945, 961 (2000).

SECTION 14. *Amendment or substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (Emphasis supplied)

Thus, if it is shown that the proper charge against petitioners should have been simple rebellion, the trial court shall dismiss the murder charges upon the filing of the Information for simple rebellion, as long as petitioners would not be placed in double jeopardy.

Section 7, Rule 117 of the Rules of Court, states:

SEC. 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Based on the above provision, double jeopardy only applies when: (1) a first jeopardy attached; (2) it has been validly terminated; and (3) a second jeopardy is for the same offense as in the first.¹²⁷

A first jeopardy attaches only after the accused has been acquitted or convicted, or the case has been dismissed or otherwise terminated without his express consent, by a competent court in a valid indictment for which the accused has entered a valid plea during arraignment.¹²⁸

¹²⁷ *Pacoy v. Cajigal*, G.R. No. 157472, 28 September 2007, 534 SCRA 338, 352.

¹²⁸ *Id.*

To recall, on 12 May 2006, an Information for the crime of rebellion, as defined and penalized under Article 134 in relation to Article 135 of the Revised Penal Code, docketed as Criminal Case No. 06-944 was filed before the RTC Makati against petitioners and several others.¹²⁹

However, petitioners were never arraigned in Criminal Case No. 06-944. Even before the indictment for rebellion was filed before the RTC Makati, petitioners Ocampo, Echanis and Ladlad had already filed a petition before this Court to seek the nullification of the Orders of the DOJ denying their motion for the inhibition of the members of the prosecution panel due to lack of impartiality and independence.¹³⁰ When the indictment was filed, petitioners Ocampo, Echanis and Ladlad filed supplemental petitions to enjoin the prosecution of Criminal Case No. 06-944.¹³¹ We eventually ordered the dismissal of the rebellion case. It is clear then that a first jeopardy never had a chance to attach.

Petitioner Ocampo shall remain on provisional liberty under the ₱100,000 cash bond posted before the Office of the Clerk of Court. He shall remain on provisional liberty until the termination of the proceedings before the RTC Manila.

The OSG has given its conformity to the provisional liberty of petitioners Echanis, Baylosis and Ladlad in view of the ongoing peace negotiations. Their provisional release from detention under the cash bond of ₱100,000 each shall continue under the condition that their temporary release shall be limited to the period of their actual participation as CPP-NDF consultants in the peace negotiations with the government or until the termination of the proceedings before the RTC Manila, whichever is sooner. It shall be the duty of the government to inform this Court the moment that peace negotiations are concluded.

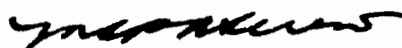
WHEREFORE, the instant consolidated petitions are **DISMISSED**. The RTC of Manila, Branch 32, is hereby **ORDERED** to proceed with dispatch with the hearing of Criminal Case No. 08-262163. Petitioner Saturnino C. Ocampo shall remain on temporary liberty under the same bail granted by this Court until the termination of the proceedings before the RTC Manila. Petitioners Randall B. Echanis, Rafael G. Baylosis and Vicente P. Ladlad shall remain on temporary liberty under the same bail granted by this Court until their actual participation as CPP-NDF consultants in the peace negotiations with the government are concluded or terminated, or until the termination of the proceedings before the RTC Manila, whichever is sooner.

¹²⁹ *Rollo* (G.R. No. 176830), pp. 117-128.

¹³⁰ *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76, 175013, 1 June 2007, 523 SCRA 318, 340.

¹³¹ *Id.*

SO ORDERED.




MARIA LOURDES P. A. SERENO
Chief Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice

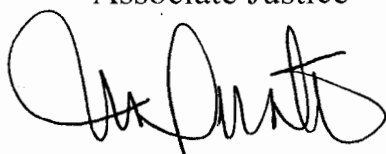


PRESBITERO J. VELASCO, JR.
Associate Justice

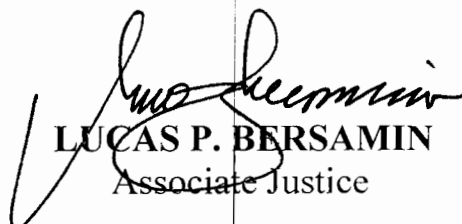
Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice




ARTURO D. BRION
Associate Justice



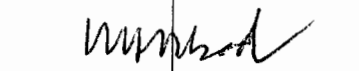
DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



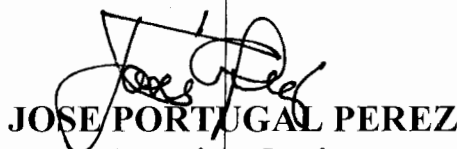
MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

see separate concurring opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice