Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAYOR "JONG" AMADO CORPUS, JR. AND CARLITO SAMONTE, Petitioners,	**G.R. No. 186403** Present:
-versus-	PERALTA, *J., Chairperson,* LEONEN, REYES, A., JR., GESMUNDO, and REYES, J., JR., *JJ.*
HON. JUDGE RAMON D. PAMULAR OF BRANCH 33, GUIMBA, NUEVA ECIJA, MRS. PRISCILLA ESPINOSA,* AND NUEVA ECIJA PROVINCIAL PUBLIC PROSECUTOR FLORO FLORENDO, Respondents.	**Promulgated:** September 5, 2018

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DECISION

LEONEN, *J.*:

An allegation of conspiracy to add a new accused without changing the prosecution's theory that the accused willfully shot the victim is merely a formal amendment.[1] However, the rule provides that only formal amendments not prejudicial to the rights of the accused are allowed after plea.[2] The test of whether an accused is prejudiced by an amendment is to determine whether a defense under the original information will still be

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* In some pleadings, Mrs. Espinosa is referred to as "Priscila." For consistency, this Decision will use "Priscilla" as per her signed Reply-Affidavit. *See rollo*, p. 62.

1 *People v. Court of Appeals*, 206 Phil. 637 (1983) [Per J. Relova, First Division].

2 *Pacoy v. Cajigal*, 560 Phil. 598 (2007) [Per J. Austria-Martinez, Third Division].

available even after the amendment is made and if any evidence that an accused might have would remain applicable even in the amended information.[3]

This Petition for Certiorari[4] under Rule 65 of the Rules of Court assails the February 26, 2009 Order[5] and Warrant of Arrest[6] issued by Judge Ramon D. Pamular (Judge Pamular) of Branch 33, Regional Trial Court, Guimba, Nueva Ecija in Civil Case No. 2618-G. The assailed Order granted the prosecution's Motion to Amend the Original Information for murder filed against Carlito Samonte (Samonte) to include Mayor Amado "Jong" Corpus (Corpus) as his co-accused in the crime charged.[7] Furthermore, it directed the issuance of a warrant of arrest against Corpus.[8]

Angelito Espinosa (Angelito) was shot by Samonte at Corpuz Street, Cuyapo, Nueva Ecjia on June 4, 2008, causing his death.[9] Samonte was caught *in flagrante delicto* and thereafter was arrested.[10] After the inquest proceedings, an Information[11] for murder dated June 5, 2008 was filed against him, thus:[12]

INFORMATION

Undersigned Inquest Prosecutor accuses CARLITO SAMONTE y LAPITAN of the crime of Murder, committed as follows:

That on or about the 4th day of June, 2008 at around 10:30 a.m. at Corpuz St., Dist., in the Municipality/City of Cuyapo, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, with malice aforethought and with deliberate intent to take the life of ANGELITO ESPINOSA, willfully, unlawfully and feloniously, treacherously and taking advantage of superior strength attack the latter and shot with an unlicensed firearm (1 Colt .45 cal. pistol with SN 217815), thereby inflicting upon him gunshot wounds, which directly caused the death of said Angelito Espinosa, to the damage and prejudice of his heirs.

CONTRARY TO LAW.

Cabanatuan City for Guimba, Nueva Ecija
June 5, 2008.[13]

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3 *People v. Casey,* 190 Phil. 748–767(1981) [Per J. Guerrero, En Banc].
4 *Rollo*, pp. 3–50.
5 Id. at 51–54.
6 Id. at 55.
7 Id. at 53.
8 Id. at 54.
9 Id. at 410.
10 Id.
11 Id. at 58.
12 Id. at 410.
13 Id. at 58.

Upon arraignment, Samonte admitted the killing but pleaded self-defense. Trial on the merits ensued.[14]

The wife of the deceased, Mrs. Priscilla Alcantara-Espinosa (Priscilla), filed a complaint-affidavit captioned as Reply-Affidavit[15] dated September 8, 2008 after the prosecution presented its second witness.[16] She also filed an unsworn but signed Reply to the Affidavit of Witnesses[17] before First Assistant Provincial Prosecutor and Officer-in-Charge Floro F. Florendo (Florendo).[18] Other affidavits of witnesses were also filed before the prosecutor's office, which included the following:

a.) Affidavit[19] of Mr. John Diego, Vice Mayor of Cuyapo, Nueva Ecija;
b.) Original Affidavit[20] and a supplemental affidavit[21] of witness Alexander Lozano y Jacob; and
c.) Joint Affidavit[22] of Victoria A. Miraflex, Ma. Floresmina S. Sacayanan, Ma. Asuncion L. Silao and Corazon N. Guerzon.[23]

Based on the affidavit[24] executed by Alexander Lozano (Lozano) on June 30, 2008, Corpuz was the one who instructed Samonte to kill Angelito.[25]

In response to Priscilla's Reply-Affidavit, Corpuz filed a Rejoinder Affidavit.[26] He also filed a Counter-Affidavit[27] against witness Lozano's

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14 Id. at 410.
15 Id. at 59–62, in I.S. No. 08F-1445 entitled *Priscilla Alcantara-Espinosa v. Mayor Amado "Jong" Corpus, Jr.*
16 Id. at 410.
17 Id. at 63–67.
18 Id. at 410.
19 Id. at 68.
20 Id. at 69.
21 Id. at 70–72.
22 Id. at 73–74.
23 Id. at 411. Ma. Floresmina Sacayanan is named as "Floremina" in the signed Joint Affidavit. *See rollo*, p. 74.
24 Id. at 310–311. The Department of Justice June 26, 2009 Resolution stated, in part:

. . . .
"Thereafter, the complainant's witness, Alexander Lozano, executed a supplemental affidavit stating, among others, that on the day of the shooting, at past nine o'clock in the morning (9:00 A.M.), he went to the Sangguniang Bayan Office to inquire from Vice Mayor John Diego about *palay* seeds being distributed by the Municipality to the farmers. Lozano took the route going to the gym at the back of the respondent mayor's office. When he was beside respondent's office, he saw Samonte whispering something to respondent outside the latter's office. He noticed from the respondent's face that he got angry from what Samonte whispered to him. Lozano saw respondent hand to Samonte a stainless gun, then heard respondent angrily say, "PUTANG INANG LITO YAN, SIGE! BIRAHIN MO!" Lozano immediately assumed that respondent referred to the victim, Espinosa, because he knew respondent entertained a grudge against the victim, since the latter led a campaign against the alleged abuses in the respondent mayor's office, and instigated the filing of criminal and administrative charges against him before the Ombudsman. Thus, he immediately proceeded to the victim's office and told the latter what he witnessed and heard, and advised him to take care.
Lozano did not include the foregoing matters in his first affidavit due to fear of reprisal, since it will implicate the respondent mayor in the killing of the victim."

25 Id. at 514.
26 Id. at 84–88 and 411.

affidavit.[28]

In its October 7, 2008 Resolution,[29] the Regional Trial Court dismissed Priscilla's complaint and the attached affidavits of witnesses.[30]

Priscilla filed a Motion for Reconsideration,[31] which was opposed by Corpus.[32] Florendo reconsidered and set aside the October 7, 2008 Resolution.[33] He also instructed Assistant Public Prosecutor Edwin S. Bonifacio (Bonifacio) to conduct the review.[34]

Bonifacio was not able to comply with the directive to personally submit his resolution by January 22, 2009, prompting Florendo to order him to surrender the records of the case as the latter was taking over the resolution of the case based on the evidence presented by the parties. This order was released on January 23, 2009 and was received by Bonifacio on the same date.[35]

In his January 26, 2009 Resolution,[36] Florendo found probable cause to indict Corpus for Angelito's murder. He directed the filing of an amended information before the Regional Trial Court.[37] The amended information provided:

INFORMATION

> Undersigned Prosecutor accuses Carlito Samonte y Lapitan *and Amado Corpuz, Jr. y Ramos* of the crime of Murder, committed as follows:
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> That on or about the 4th day of June, 2008 at around 10:30 a.m. at Corpuz St., Dist., in the Municipality of Cuyapo, Province of Nueva Ecija, Phillippines (sic), and within the jurisdiction of this Honorable Court, the above-named accused, ***conspiring and confederating together,*** did then

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27 Id. at 75–83. *See rollo*, p. 311 where the Department of Justice June 26, 2009 Resolution stated, in part:

. . . .

"Respondent, in his counter-affidavit, denied the accusation against him and stated that he neither had any involvement nor participation in the quarrel between Samonte and the victim. What happened between them was a personal matter. Respondent further quoted the police witness' statement that the shooting incident was preceded by a heated altercation between Samonte and the victim.

"Among others, respondent further stressed that Lozano's statement is biased, an afterthought, full of improbabilities and were highly opinionated surmises and conjectures."

28 Id. at 411.

29 Id. at 89–95. The Resolution, docketed as I.S. No. 08F-1445, was penned by Prosecutor II Edison V. Rafanan and approved by First Assistant Provincial Prosecutor Floro F. Florendo of the Office of the Provincial Prosecutor of Nueva Ecija, Cabanatuan City.

30 Id. at 411.

31 Id. at 96–107.

32 Id. at 411–412.

33 Id. at 108–109.

34 Id. at 412.

35 Id.

36 Id. at 122–125.

37 Id. at 412.

> and there, with malice aforethought and with deliberate intent to take [the] life of ANGELITO ESPINOSA, willfully, unlawfully and feloniously, treacherously and taking advantage of superior strength attack the latter and shot with an unlicensed firearm (1 Colt .45 cal. Pistol with SN 217815), thereby inflicting upon him gunshot wounds, which directly caused the death of said Angelito Espinosa, to the damage and prejudice of his heirs.
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> CONTRARY TO LAW.
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> Cabanatuan City for Guimba, Nueva Ecija, January 26, 2009.[38] (Emphasis supplied)

Despite Florendo taking over the case, Bonifacio still issued a Review Resolution dated January 26, 2009, where he reinstated the Regional Trial Court October 7, 2008 Resolution and affirmed the dismissal of the murder complaint against Corpus.[39] The dispositive portion of his Resolution provided:

> In view of the foregoing and probable cause, the Resolution of Assistant Provincial Prosecutor Edison V. Rafanan, dated October 7, 2008, being in accord with the facts obtaining in this case and with established rules, procedures and jurisprudence, is reinstated.
>
> The criminal complaint for murder against respondent Mayor Amado "Jong" Corpu[s] is **DISMISSED**.[40] (Emphasis in the original)

Meanwhile, Florendo filed an undated Motion to Amend Information, praying for the admission of the amended information.[41] Corpus and Samonte opposed this Motion by filing a Joint Urgent Manifestation/Opposition dated February 2, 2009.[42]

The prosecution filed a Motion for Reconsideration.[43] Samonte and Corpus opposed this through a Vehement Opposition and Omnibus Motion dated February 4, 2009.[44] They averred that Judge Pamular's action was premature considering that the Motion to Amend Information has yet to be scheduled for hearing.[45] Moreover, Samonte was already arraigned.[46] Samonte and Corpus also claimed that the issuance of a warrant of arrest should be suspended because the latter intended to appeal through a Petition for Review before the Department of Justice.[47]

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38 Id. at 56.
39 Id. at 110–121.
40 Id. at 120–121.
41 Id. at 230-231 and 413.
42 Id. at 232–240 and 413.
43 Id. at 413. No copy of this Motion for Reconsideration is attached in the *rollo*.
44 Id. at 241–263.
45 Id. at 242–243.
46 Id. at 244–249.
47 Id. at 254–257.

Samonte and Corpus jointly filed a Petition for Review dated February 9, 2009 before the Department of Justice.[48] They also filed a Manifestation and Motion dated February 9, 2009 with the Regional Trial Court, asking it to desist from acting further on the Amended Information in view of the Petition for Review filed with the Department of Justice.[49]

However, despite the manifestation, Judge Pamular of Branch 33, Regional Trial Court, Guimba, Nueva Ecija issued the assailed February 26, 2009 Order, which granted the motion to amend the information and to admit the attached amended information. The assailed Order also directed, among others, the issuance of a warrant of arrest against Corpus.[50] The dispositive portion of the Order read:

> **WHEREFORE**, premises considered, this Court after personally examining the amended information and its supporting documents finds probable cause and hereby orders to:
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> 1. Grant the motion to amend the information;
> 2. Admit the attached amended information;
> 3. Issue the Warrant of Arrest for the immediate apprehension of the respondent-movant Amado Corpu[s], Jr.; and
> 4. Deny the motion to defer/suspend arraignment and further proceedings of this case.
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> SO ORDERED.[51]

Hence, a direct recourse before this Court, through a Petition for Certiorari under Rule 65 with a prayer for an immediate issuance of a temporary restraining order, was filed by Corpus and Samonte on March 3, 2009.[52] This Petition seeks to enjoin Judge Pamular from enforcing the February 26, 2009 Order and the warrant of arrest issued pursuant to the Order, and from conducting further proceedings in the murder case.

Through its March 9, 2009 Resolution, this Court required respondents to comment on the Petition.[53] It also granted petitioners' prayer for a temporary restraining order. Judge Pamular, Florendo, Priscilla, and all other persons acting on the assailed Regional Trial Court February 26, 2009 Order were enjoined from implementing it and the warrant of arrest issued pursuant to it.[54]

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48 Id. at 126–225.
49 Id. at 226–229.
50 Id. at 53–54.
51 Id.
52 Id. at 3–50.
53 Id. at 254–255.
54 Id. at 256–258.

Priscilla filed her comment on April 3, 2009.[55] She cites *Oaminal v. Castillo*,[56] which provided that in filing a petition for certiorari under Rule 65, Section 1 there should be "no appeal nor any plain, speedy and adequate remedy in the ordinary course of law" available.[57] Considering that there is still a remedy available for the accused apart from filing a petition, the petition shall fail. She claims that petitioners should have first filed a motion for reconsideration with the Regional Trial Court before resorting to a petition for certiorari before this Court.[58]

She insists that the Regional Trial Court is correct in granting the motion to admit the amended information because it has no effect on Samonte's case and reasoned that:

> [F]irst, because there would only be an addition of another accused with prior authority f[ro]m the Honorable Provincial Prosecutor, second, the amendment will not cause any prejudice to the rights of the accused and more importantly, that is what is provided for by the Rules[.][59]

She claims that the alleged lack of determination of probable cause before the issuance of a warrant has no basis since petitioners failed to present evidence or facts that would prove their claim.[60]

Judge Pamular filed his Comment on April 8, 2009.[61] He asserts that he made a careful perusal of the case records in issuing the assailed order. His independent judgment on the existence of probable cause was derived from his reading and evaluation of pertinent documents and evidence. He states that he had set the case for hearing on February 13, 2009, when both parties were heard and given the opportunity to argue.[62] He also added:

> Yes, indeed, while the undersigned could rely on the findings of the Honorable Provincial Prosecutor, I am nevertheless not bound thereby. The termination by the latter of the existence of probable cause is for a purpose different from that which is to be made by the herein respondent judge. I have no cogent reason to question the validity of the findings of the Honorable Provincial Prosecutor. I have much respect for the latter. Thus, after giving due course to the arguments of parties and their respective counsels, I was fully convinced in good faith that, indeed, there was a reasonable ground to believe in the existence of probable cause for . . . the immediate apprehension and prosecution of Mayor Amado "Jong" Corpu[s], Jr. Hence, the issuance of the assailed controversial Order. . . .[63]

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55 Id. at 268–276.
56 459 Phil. 542 (2003) [Per J. Panganiban, Third Division].
57 *Rollo*, p. 269.
58 Id. at 269–270.
59 Id. at 270.
60 Id. at 271.
61 Id. at 279–282.
62 Id. at 281–282.
63 Id. at 282.

On July 22, 2009, Priscilla filed a Manifestation[64] before this Court. She asserts that this "present petition questioning the alleged impropriety of the admission of the amended information as well as the issuance of a warrant of arrest against Mayor Amado Corpu[s], Jr. has no more legal legs to stand on."[65] She claims[66] that Florendo's January 26, 2009 Resolution was upheld by the Department of Justice in its June 26, 2009 Resolution,[67] the *fallo* of which read:

> WHEREFORE, premises considered, the petition for review is hereby dismissed. Accordingly, the Officer-in-Charge Provincial Prosecutor of Nueva Ecija is **directed to file the appropriate Information** against the respondent Mayor Amado Corpu[s], Jr., and to report the action taken thereon within ten (10) days from receipt hereof.
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> SO ORDERED.[68] (Emphasis supplied)

Priscilla asserts further that the issue regarding the suspension of proceedings pending resolution by the Department of Justice can now be considered moot and academic.[69]

On July 24, 2009, petitioners filed a Counter Manifestation.[70] They claim that respondent Priscilla's prayer for the lifting of the temporary restraining order is premature, thus:[71]

> [Priscilla] should have been more candid. [She] should have informed the Honorable Court that a motion for reconsideration with the Department of Justice was filed by the herein petitioner, and is still pending resolution. And in the event said motion for reconsideration is denied, and as a part of petitioner/accused right to due process of law, it being clearly provided by the rules, ***he would elevate said resolution to the Court of Appeals on certiorari – and, certainly, the aggrieved party would bring the matter before this Honorable Court*** - during which interregnum, the appealed resolution of the Provincial Prosecutor . . . would not have yet attained finality which is what jurisprudence underscores before the respondent court should have proceeded with the amended information.[72] (Emphasis supplied, citations omitted)

They further claim that lifting the temporary restraining order would be a relief "too harsh and preposterous" since Corpus would be immediately

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64 Id. at 307–309.
65 Id. at 308.
66 Id. at 307–308.
67 Id. at 310–313. The Resolution, docketed as I.S. No. 08F-1445, was signed by Acting Secretary Agnes VST Devanadera of the Department of Justice.
68 Id. at 313.
69 Id. at 308.
70 Id. at 315–328.
71 Id. at 316.
72 Id. at 316–317.

imprisoned and constrained to face trial due to a flawed amended information.[73] In case this Court resolves to quash the amended information and nullify the warrant, Corpuz will have already "suffered grave and irreparable injury—as he would not be able to discharge his constitutional mandate/duty to his constituents as their duly elected mayor."[74] As to Samonte, he will be allegedly "forced to face another set of defense—against the theory of conspiracy in the amended information which, as we have heretofore stated, after his arraignment and trial half way, could no longer be proper."[75]

On August 6, 2009, the Office of the Solicitor General filed its Comment.[76] It claims that petitioners should have made a distinction on the propriety of respondent judge's acts in granting the admission of the amended information and in ordering the issuance of a warrant. It posits that these acts are at par with the court's acquisition of jurisdiction over the subject matter and the person of the accused. These acts have nothing to do with the suspension of arraignment provided for under Rule 116, Section 11 of the Revised Rules of Criminal Procedure, which ordinarily happens after a trial court has acquired jurisdiction.[77]

The Office of the Solicitor General also adds that the insertion of the phrase "*conspiring and confederating together*" in the amended information will not affect Samonte's substantial rights.[78] Thus, the original charge against Samonte of murder and his deliberate manner of shooting Angelito remain unaltered:[79]

> Even if one or all of the elements of the crime of murder as alleged in the original information filed against petitioner Samonte is not proven, the addition of conspiracy in the amended information, if duly proven, would not in any way result in his conviction because conspiracy is not an essential or qualifying element of the crime of murder.[80]

The Office of the Solicitor General avers that respondent judge was well acquainted with the legal and factual circumstances behind the filing of the original information against Samonte. The amended information merely added Corpus as a co-conspirator. Thus, before respondent judge issued the assailed order, a prior hearing was held on February 13, 2009, when all the parties were heard.[81]

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73 Id. at 326.
74 Id.
75 Id. at 327.
76 Id. at 409–430.
77 Id. at 416.
78 Id. at 418.
79 Id. at 419.
80 Id.
81 Id. at 424–425.

The Office of the Solicitor General also asserts that while respondent judge committed error when he denied petitioners' motion to suspend proceedings, what the law only requires under Rule 116, Section 11 is a maximum of 60-day suspension of the arraignment. In this case, the 60-day period had already lapsed, rendering the issue raised by petitioners moot. Hence, there is no longer any hindrance for respondent judge to continue with Corpus' arraignment.[82]

Petitioners filed their reply on August 7, 2009.[83] They claim that respondent judge should have suspended action on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice.[84] They cite *Ledesma v. Court of Appeals*,[85] which stated:

> Where the secretary of justice exercises his power of review only after an information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. Such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.[86]

Petitioners also cite the dispositive portion of *Tolentino v. Bonifacio*,[87] which directed the respondent judge in that case to desist from proceeding with the trial until after the Department of Justice would have finally resolved a pending petition for review.[88] Thus:

> While [w]e have noted from the *expediente* that the petitioner has utilized dilatory tactics to bring the case against her to trial, still she is entitled to the remedy she seeks. The respondent judge should not be more anxious than the prosecution in expediting the disposition of the case absent any indication of collusion between it and the defense. *The Ministry of Justice should not be deprived of its power to review the action of the City Fiscal by a precipitate trial of the case.*
>
> **WHEREFORE**, the petition is granted. The respondent judge is hereby ordered not to proceed with the trial of the above-numbered criminal case until after the Ministry of Justice has resolved the petition for review filed by Mila P. Tolentino. No costs.[89] (Emphasis supplied)

Petitioners claim that due to the theory of conspiracy in the amended information, Samonte will have an additional burden of setting up a new

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82 Id. at 427–428.
83 Id. at 431–449.
84 Id. at 433.
85 344 Phil. 207 (1997) [Per J. Panganiban, Third Division].
86 Id. at 232.
87 223 Phil. 558 (1985) [Per J. Abad-Santos, Second Division].
88 *Rollo*, pp. 472–473.
89 Id. at 435.

defense particularly on any acts of his co-accused since "the act of one is the act of all."[90]

Petitioners also claim that respondent judge failed to comply with the mandate of making a prior determination of probable cause before issuing the warrant. They insist that this mandate "is never excused nor dispensed with by the respondent [judge]'s self-serving narration of the law (not the required facts) stated in [his] assailed order."[91]

On the issue of whether the arraignment of Corpus may proceed despite the lapse of the 60-day maximum period of suspension under Rule 116, Section 11(c), petitioners aver that "[w]hat jurisprudence underscores is not the lapse of the 60-day period, but the issue of finality of the decision on appeal."[92] The matter should not only cover the suspension of arraignment but for respondent judge to defer from further proceedings on the amended information pending the final resolution of the Department of Justice.[93]

This Court, through its August 26, 2009 Resolution, required the parties to submit their respective memoranda.[94]

Petitioners filed their memorandum on October 15, 2009.[95] In their memorandum, they attached the Department of Justice September 8, 2009 Resolution,[96] which granted their motion for reconsideration, thus:[97]

> **WHEREFORE**, the motion for reconsideration of the respondent is hereby GRANTED. Accordingly, the Resolution promulgated on June 26, 2009 (Resolution No. 473) is hereby **REVERSED AND SET ASIDE**. The Provincial Prosecutor of Nueva Ecija is hereby directed to cause the withdrawal of the information for murder against the respondent, if one has been filed in court, and to report the action taken thereon within ten (10) days from receipt hereof.
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> **SO ORDERED.**[98] (Emphasis in the original)

Petitioners assert that Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure provides that upon motion by the proper party, the arraignment shall be suspended:[99]

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90 Id. at 436–437.
91 Id. at 440.
92 Id. at 446.
93 Id.
94 Id. at 450–451.
95 Id. at 456–495.
96 Id. at 496–499.
97 Id. at 457.
98 Id. at 498.
99 Id. at 473.

Rule 116
Arraignment and Plea

> Section 11. Suspension of Arraignment. — Upon motion by the proper party, the arraignment shall be suspended in the following cases:
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> . . . .
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> (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

Petitioners add that respondent judge should have refrained from issuing the assailed warrant of arrest because he was aware of the fact that the amended information was a result of the flip-flopping stand of the public prosecutor from his original stand.[100] Thus, they claim that the motive behind the filing of the amended information that included Corpus as an additional accused is political.[101]

They aver that respondent judge failed to personally make his independent findings of probable cause that will justify the issuance of the warrant. They insist that the February 26, 2009 Order only consists of three (3) short sentences, which merely pointed out a certain legal provision, instead of facts, that would supposedly justify the issuance of the warrant of arrest, thus:[102]

> Elementary is the rule that the existence of probable cause is indispensable in the filing of the complaint or information and in the issuance of warrant of arrest. The legion of jurisprudence has defined probable cause to be concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man and not the exacting calibrations of a judge after a full blown trial. No law or rule states that probable cause requires a specific kind of evidence. It is determined in the light of conditions obtaining in a given situation.[103]

Petitioners also cite Rule 110, Section 14 of the Revised Rules of Criminal Procedure, which prohibits substantial amendment of information that is prejudicial to the rights of the accused after his or her arraignment, thus:

Rule 110
Prosecution of Offenses

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[100] Id. at 473–474.
[101] Id. at 485.
[102] Id. at 476–477.
[103] Id. at 477–478.

> 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.*[104] (Emphasis in the original)

They cite *People v. Montenegro*,[105] which provided that an allegation of conspiracy that was not previously included in the original information constitutes a substantial amendment:[106]

> **The allegation of conspiracy among all the private respondents-accused, which was not previously included in the original information, is likewise a substantial amendment saddling the respondents with the need of a new defense in order to meet a different situation in the trial court. In *People v. Zulueta*,** it was held that:
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> > Surely the preparations made by herein accused to face the original charges will have to be radically modified to meet the new situation. For undoubtedly the allegation of conspiracy enables the prosecution to attribute and ascribe to the accused Zulueta all the acts, knowledge, admissions and even omissions of his co-conspirator Angel Llanes in furtherance of the conspiracy. The amendment thereby widens the battlefront to allow the use by the prosecution of newly discovered weapons, to the evident discomfiture of the opposite camp. Thus it would seem inequitable to sanction the tactical movement at this stage of the controversy, bearing in mind that the accused is only guaranteed two-days' (sic) preparation for trial. Needless to emphasize, as in criminal cases, the liberty, even the life, of the accused is at stake, it is always wise and proper that he be fully apprised of the charges, to avoid any possible surprise that may lead to injustice. The prosecution has too many facilities to covet the added advantage of meeting unprepared adversaries.
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> **To allow at this stage the proposed amendment alleging conspiracy among all the accused, will make all of the latter liable not only for their own individual transgressions or acts but also for the acts of their co-conspirators.**[107] (Emphasis in the original)

The Office of the Solicitor General filed its Memorandum on October 16, 2009, which merely reiterated the arguments and discussions in its Comment to the Petition.[108] Similarly, respondent Priscilla's Memorandum

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104 Id. at 490.
105 242 Phil. 655 (1988) [Per J. Padilla, Second Division].
106 *Rollo*, p. 491.
107 Id. at 491–492.
108 Id. at 500–523.

adopted the arguments presented by the Office of the Solicitor General in its comment and memorandum.[109]

On March 19, 2014, Priscilla filed a Manifestation,[110] which provides that on October 30, 2013, Samonte executed an affidavit,[111] stating that Corpuz ordered him to kill Angelito.[112] Samonte's affidavit provided:

SALAYSAY

Ako si Carlito Samonte kasalukuyang nakakulong sa Provincial Jail ng Cabanatuan City sa kasong Murder kay Angelito Espinosa sa utos po ni Mayor Amado R. Corpuz Jr. ay matagal na pong plano ang pagpatay kay Angelito Espinosa. Nagsimula po ito sa pagwasak sa aircondition sa magiging opisina ni Angelito Espinosa at sa motor niyang single, at iyon ay sa utos ni Mayor Amado R. Corpuz Jr. hanggang umabot sa puntong sabihan ako na ang tagal-tagal mo namang patayin si Angelito Espinosa pagalit na sinabi sa akin.

At noong June 4, 2008 sa pagitan ng 9:30 AM at 10 AM ng nasabing oras sinabi sa akin muli na "Ayokong maupo yang si Angelito Espinosa bilang secretaryo ng Sangguniang Bayan." Sinabi ni Mayor Amado R. Corpuz Jr. na gumawa ka ng senaryo para huwag makaupo yan bilang B-SEC (Sangguniang Bayan Secretary) Bayan at kahit anong klaseng senaryo patayin mo kung kaya mong patayin at ako na ang bahala sa lahat. Kunin mo ang baril dito sa opisina ko, iyan po ang utos sa akin ni Mayor Amado Corpuz Jr.

Kusa po akong gumawa ng sarili kong affidavit at salaysay na walang nagbayad, pumilit at nanakot sa akin para gawin ang salaysay at affidavit kong ito, at marami pa po akong isasalaysay pagharap ko po sa korte.

Gumagalang,
Carlito Samonte
(signed)

Subscribed and sworn to before me:
(signed)
Atty. Marcus Marcellinus S. Gonzales[113]

On April 14, 2014, this Court received Priscilla's letter dated April 11, 2014 addressed to the Chief Justice of the Supreme Court, asking for assistance in the resumption of trial in view of Samonte's affidavit.[114]

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109 Id. at 534–544.
110 Id. at 556–560.
111 Id. at 559, handwritten Affidavit of Samonte dated October 30, 2013, executed before Atty. Marcus Marcellinus S. Gonzales of the Public Attorney's Office, Cabanatuan City.
112 Id. at 556.
113 Id. at 559.
114 Id. at 564–565. The letter stated, in part:
April 11, 2014

Hon. Maria Lourdes P. A. Sereno
Chief Justice of the Supreme Court
Padre Faura cor. Taft, Manila

Dear Ma'am,

The issues for this Court's resolution are as follows:

First, whether or not respondent Judge Ramon Pamular committed grave abuse of discretion amounting to lack or excess of jurisdiction when he conducted further proceedings on the Amended Information and consequently issued a warrant of arrest against petitioner Amado Corpus, Jr. despite the pendency of his and petitioner Carlito Samonte's Petition for Review before the Department of Justice;

Second, whether or not the arraignment of petitioner Amado Corpus, Jr. may proceed after the lapse of the maximum 60-day period suspension provided for under Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure;

Third, whether or not respondent Judge Ramon Pamular committed grave abuse of discretion amounting to lack or excess of jurisdiction when he allegedly admitted the Amended Information in clear defiance of law and jurisprudence, which proscribes substantial amendment of information prejudicial to the right of the accused; and

Finally, whether or not respondent Judge Ramon Pamular has personally determined, through evaluation of the Prosecutor's report and supporting documents, the existence of probable cause for the issuance of a warrant of arrest against petitioner Amado Corpus, Jr.

The Petition lacks merit.

I

Before this Court delves on the substantive issues in this case, it first rules on the procedural matter involved.

. . . .
Ma'am I do appreciate the court's initiative to bring justice to its oppressed people but it seems that efforts made we're all be in vain if orders will not be implemented with sincerity and can be an avenue for the criminals to escape their crime and left the victims in agony and pain.
Last October 30, 2013 an unexpected turn of event came where Carlito "Kuratong" Samonte executed his extrajudicial confession freely and voluntarily before Atty. Marcus Marcellinus S. Gonzales of the Public Attorney's office in Cabanatuan City where he admitted that it was Mayor Amado Corpus Jr. who ordered him to kill my husband.
This vital event have given me an opportunity to file a manifestation before the honorable Supreme court through my counsel on March 19, 2014 hoping that the case will be brought back to court to resume trial as petitioner Samonte has, in effect, parted ways with his co-petitioner Corpuz; and the allegation that "the new theory of conspiracy in the Amended Information would substancially prejudice accused Samonte's right to due process" would now be not applicable. (Grammatical errors in the original)

Respondent Priscilla claims that petitioners should have first filed a Motion for Reconsideration with the Regional Trial Court before resorting to this Petition. Failure to do so renders it dismissible.[115]

This issue was not addressed by petitioners in their reply or memorandum. However, petitioners justified their direct recourse before this Court insisting that their case is anchored on pure questions of law and impressed with public interest. Thus, they claim that regardless of the rule on hierarchy of courts, their filing of a petition is not a matter of choice but even mandatory.[116]

Rule 65, Section 1 of the Revised Rules of Civil Procedure provides:

> Section 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, ***and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law***, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

Rivera v. Espiritu[117] enumerated the essential requisites for a petition for certiorari under Rule 65:

> (1) [T]he writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) ***there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.***[118] (Emphasis supplied, citation omitted)

The plain and adequate remedy pertained to by the rules is a motion for reconsideration of the assailed order or decision.[119] Certiorari, therefore, "is not a shield from the adverse consequences of an omission to file the required motion for reconsideration."[120]

It is settled that a motion for reconsideration is a "condition *sine qua*

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115 Id. at 270.
116 Id. at 3–4.
117 425 Phil. 169 (2002) [Per J. Quisumbing, Second Division].
118 Id. at 179–180.
119 *Metro Transit Organization, Inc. v. Court of Appeals,* 440 Phil. 743, 753 (2002) [Per J. Carpio, First Division].
120 Id. at 752.

non for the filing of a Petition for Certiorari."[121] This enables the court to correct "any actual or perceived error" through a "re-examination of the legal and factual circumstances of the case."[122] To dispense with this condition, there must be a "concrete, compelling, and valid reason."[123] However, the following exceptions apply:

> (a) where the order is a patent of nullity, as where the *court a quo* has no jurisdiction;
>
> (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
>
> (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;
>
> (d) where, under the circumstances, a motion for reconsideration would be useless;
>
> (e) where petitioner was deprived of due process and there is extreme urgency for relief;
>
> (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
>
> (g) where the proceedings in the lower court are a nullity for lack of due process;
>
> (h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity to object; and
>
> (i) where the issue raised is one purely of law or where public interest is involved.[124]

Nothing in the records shows that petitioners filed a motion for reconsideration with the Regional Trial Court. Apart from bare conclusion, petitioners failed to present any plausible reason why they failed to file a motion for reconsideration before filing a petition before this Court. While this issue was raised by respondent Priscilla in her Comment, this was not sufficiently addressed by petitioners either in their Reply or Memorandum.

It must be stressed that the filing of a motion for reconsideration, as well as filing it on time, is not a mere procedural technicality.[125] These are "jurisdictional and mandatory requirements which must be strictly complied with."[126] Therefore, petitioners' failure to file a motion for reconsideration with the Regional Trial Court before filing this Petition is fatal.

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121 *Republic v. Bayao,* 710 Phil. 279, 287 (2013) [Per J. Leonen, Third Division].

122 Id.

123 *Metro Transit Organization, Inc. v. Court of Appeals,* 440 Phil. 743, 753 (2002) [Per J. Carpio, First Division].

124 Id. at 751, citing *Abraham v. NLRC,* 406 Phil. 310 (2001) [Per J. Gonzaga-Reyes, Third Division].

125 *Republic v. Pantranco North Express, Inc. (Resolution),* 682 Phil. 186 (2012) [Per J. Villarama, Jr., First Division].

126 Id. at 195.

II

Two (2) kinds of determination of probable cause exist: executive and judicial.[127] These two (2) kinds of determination of probable cause were distinguished in *People v. Castillo.*[128] Thus,

> There are two kinds of determination of probable cause: executive and judicial. *The **executive** determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial.* Otherwise stated, such official has the quasi-judicial authority to determine *whether or not a criminal case must be filed in court.* Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has 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.
>
> The ***judicial*** determination of probable cause, on the other hand, is *one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.* The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.
>
> [T]he public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts *must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.*[129] (Emphasis supplied, citations omitted)

Thus, courts do not meddle with the prosecutor's conduct of a preliminary investigation because it is exclusively within the prosecutor's discretion.[130]

However, once the information is already filed in court, the court has acquired jurisdiction of the case. Any motion to dismiss or determination of the guilt or innocence of the accused is within its discretion.[131]

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127 *People v. Castillo*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].
128 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].
129 Id. at 764–765.
130 *De Lima v. Reyes,* G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per J. Leonen, Second Division].
131 Id., citing *Crespo v. Mogul,* 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

Crespo v. Mogul[132] provided:

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> *The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court.* Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. *While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.* The only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.
>
> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
>
> However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibl[y be] designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.
>
> The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the

[132] 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

presentation of the evidence to the private prosecutor but still under his direction and control.

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[133] (Emphasis supplied, citations omitted)

Hence, when a Regional Trial Court has already determined that probable cause exists for the issuance of a warrant of arrest, like in this case, jurisdiction is already with the Regional Trial Court.[134] Therefore, it can proceed in conducting further proceedings on the amended information and on the issuance of a warrant despite the pendency of a Petition for Review before the Department of Justice.

III.A

Petitioners insist that respondent judge should have deferred from conducting further proceedings on the amended information and on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice.[135] They cite Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure, which provides:

RULE 116
Arraignment and Plea

. . . .

Section 11. Suspension of arraignment — Upon motion by the proper party, ***the arraignment shall be suspended*** in the following cases:

. . . .

(c) *A petition for review of the resolution of the prosecutor is pending at either the Department of Justice*, or the Office of the President;

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[133] Id. at 474–476.

[134] *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per J. Leonen, Second Division].

[135] *Rollo*, p. 469.

> *provided, that the period of suspension shall* ***not exceed*** *sixty (60) days counted from the filing of the petition with the reviewing office.* (Emphasis supplied)

Rule 116, Section 11 of the Revised Rules of Criminal Procedure pertains to a suspension of an arraignment in case of a pending petition for review before the Department of Justice. It does not suspend the execution of a warrant of arrest for the purpose of acquiring jurisdiction over the person of an accused.

In the assailed February 26, 2009 Order, Judge Pamular denied Corpus' motion to defer or suspend arraignment and further proceedings.[136] Petitioners claim that he should have suspended action on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice, citing *Ledesma v. Court of Appeals*[137] and *Tolentino v. Bonifacio*[138] as their bases.[139] Furthermore, they also assert that the assailed Order defies Rule 116, Section 11 of the Revised Rules of Criminal Procedure.[140]

Rule 116, Section 11 of the Revised Rules of Criminal Procedure provides for the grounds for suspension of arraignment. Upon motion by the proper party, the arraignment shall be suspended in case of a pending petition for review of the prosecutor's resolution filed before the Department of Justice.

Petitioners filed a Manifestation and Motion[141] dated February 9, 2009 before the Regional Trial Court, informing it about their pending Petition for Review of the Prosecutor's January 26, 2009 Resolution before the Department of Justice.[142] Thus, respondent judge committed an error when he denied petitioners' motion to suspend the arraignment of Corpus because of the pendency of their Petition for Review before the Department of Justice.

However, this Court's rule merely requires a maximum 60-day period of suspension counted from the filing of a petition with the reviewing office.[143] Consequently, therefore, after the expiration of the 60-day period,

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136 Id. at 54.

137 344 Phil. 207 (1997) [Per J. Panganiban, Third Division].

138 223 Phil. 558 (1985) [Per J. Abad-Santos, Second Division].

139 *Rollo*, pp. 472–473.

140 Id. at 473.

141 Id. at 226–229.

142 Id. at 227.

> . . . .
> 3. As regards both accused, the said 26 January 2009 Florendo's resolution having been elevated to the DOJ Secretary, by way of appeal, and giving due respect to the power of the DOJ Secretary under its power of control and supervision over all prosecutors, notwithstanding the filing of the information in court, any further proceedings thereto need be immediately deferred/suspended.
> . . . .

143 RULES OF COURT, Rule 116, sec. 11.

"the trial court is bound to arraign the accused or to deny the motion to defer arraignment."[144]

Petitioners jointly filed their Petition for Review[145] before the Department of Justice on February 9, 2009.[146] Thus, the 60-day period has already lapsed since April 10, 2009. Hence, respondent judge can now continue with the arraignment and further proceedings with regard to petitioner Corpus.

III.B

A reading of *Ledesma v. Court of Appeals*[147] reveals that the provided ruling does not mainly tackle the issue presented in this case.

In *Ledesma*, a complaint for libel was filed against Rhodora Ledesma (Ledesma) before the City Prosecutor's Office. Upon finding "sufficient legal and factual basis,"[148] the City Prosecutor's Office filed an information against Ledesma before the Regional Trial Court. Ledesma then filed a petition for review before the Department of Justice, which gave due course to the petition directing the Prosecutor to move for the deferment of further proceedings and to elevate the records of the case to it. Conformably, the Prosecutor filed a Motion to Defer Arraignment before the Regional Trial Court, which granted the motion and deferred arraignment until termination of the Department of Justice's petition for review. Without the trial prosecutor's consent, the counsel for private complainant filed a motion to lift the order and to set the case for trial or arraignment. The Regional Trial Court granted the motion then consequently scheduled Ledesma's arraignment. However, the Secretary of Justice reversed the prosecutor's findings directing the trial prosecutor to file before the Regional Trial Court a motion to withdraw information, which was subsequently denied. Its denial of the motion was affirmed by the Court of Appeals.

The main issue in *Ledesma* was whether the respondent judge in that case erred in denying the motion to withdraw information and the consequent motion for reconsideration. This Court held that the act of the judge was erroneous since he failed to give his reasons for denying the motions, and to make any independent assessment of the motion and of the resolution of the Secretary of Justice. Thus:

> In the light of recent holdings in *Marcelo* and *Martinez*; and considering that the issue of the correctness of the justice secretary's

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144 *Samson v. Daway,* 478 Phil. 793 (2004) [Per J. Ynares-Santiago, First Division].
145 *Rollo,* pp. 126–225.
146 Id. at 413.
147 344 Phil. 207 (1997) [Per J. Panganiban, Third Division].
148 Id. at 218.

> resolution has been amply threshed out in petitioner's letter, the information, the resolution of the secretary of justice, the motion to dismiss, and even the exhaustive discussion in the motion for reconsideration — all of which were submitted to the court — the trial judge committed grave abuse of discretion when it denied the motion to withdraw the information, based solely on his bare and ambiguous reliance on *Crespo*. The trial court's order is inconsistent with our repetitive calls for an independent and competent assessment of the issue(s) presented in the motion to dismiss. *The trial judge was tasked to evaluate the secretary's recommendation finding the absence of probable cause to hold petitioner criminally liable for libel. He failed to do so. He merely ruled to proceed with the trial without stating his reasons for disregarding the secretary's recommendation.*
>
> Had he complied with his judicial obligation, he would have discovered that there was, in fact, sufficient ground to grant the motion to withdraw the information. The documents before the trial court judge clearly showed that there was no probable cause to warrant a criminal prosecution for libel.[149] (Emphasis supplied)

This was reiterated in the ratio of that case, which read:

> When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, *the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts.* A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action.[150] (Emphasis supplied)

Petitioners in this case hinge their claim on *Ledesma* in arguing that respondent Judge Pamular should have suspended action on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice, which stated:[151]

> Where the secretary of justice exercises his power of review only after an information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. Such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.[152]

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149 Id. at 235–236.
150 Id. at 217.
151 *Rollo*, p. 433.
152 Id. at 434–435.

While the quoted portion relates to the issue on suspending arraignment pending the review of the Department of Justice, there is nothing in *Ledesma* that speaks of suspending the issuance of a warrant of arrest. Although there is an error on the part of Judge Pamular in denying petitioners' motion to suspend the arraignment of Corpus, he can validly issue a warrant of arrest upon finding probable cause to acquire jurisdiction over Corpus. Hence, this was strengthened in the cited case of *Ledesma*, stating that "[j]urisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case."[153]

They also cited the dispositive portion of *Tolentino*, which directed the respondent judge in that case to desist from proceeding with the trial until after the Department of Justice would have finally resolved the pending petition for review:[154]

> While We have noted from the *expediente* that the petitioner has utilized dilatory tactics to bring the case against her to trial, still she is entitled to the remedy she seeks. The respondent judge should not be more anxious than the prosecution in expediting the disposition of the case absent any indication of collusion between it and the defense. The Ministry of Justice should not be deprived of its power to review the action of the City Fiscal by a precipitate trial of the case.
>
> WHEREFORE, the petition is granted. The respondent judge is hereby ordered not to proceed with the trial of the above-numbered criminal case until after the Ministry of Justice has resolved the petition for review filed by Mila P. Tolentino. No costs.[155]

Tolentino involved a petition for certiorari that sought to annul the order of the respondent judge in that case to proceed with the trial of the case premised on grave abuse of discretion.[156] In that case, petitioners Mila Tolentino (Mila) and Roberto Tolentino were accused of falsification of public documents before the Regional Trial Court of Tagaytay. Prior to Mila's arraignment, she asked for the suspension of the proceedings due to the pendency of a petition for review before the Ministry of Justice. The respondent judge in that case required the fiscal to comment. In the comment, the fiscal interposed no objection on the motion. However, respondent judge denied the motion stating that the city fiscal had already reinvestigated the case and speedy trial should also be afforded to the prosecution. Hence, this Court ruled that respondent judge should not proceed to trial pending the review before the Ministry of Justice.

However, the factual milieu of *Tolentino* is different from the present

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153 Id.
154 Id. at 472–473.
155 Id. at 435.
156 *Tolentino v. Bonifacio*, 223 Phil. 558 (1985) [Per J. Abad-Santos, Second Division].

case. It does not involve the issuance of a warrant of arrest necessary for acquiring jurisdiction over the person of the accused.

IV.A

Petitioners question the inclusion of Corpus and the insertion of the phrase "conspiring and confederating together" in the amended information. They contend that Rule 110, Section 14 of the Revised Rules of Criminal Procedure prohibits substantial amendment of information that is prejudicial to the rights of the accused after his or her arraignment.[157] To buttress their point, they cited *People v. Montenegro*,[158] which provided that an allegation of conspiracy, which was not previously included in the original information, constitutes a substantial amendment.[159]

Rule 110, Section 14 of the Revised Rules of Criminal Procedure provides:

> Rule 110
> Prosecution of Offenses
>
> 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.* . . . (Emphasis supplied)

Before an accused enters his or her plea, either formal or substantial amendment of the complaint or information may be made without leave of court. After an entry of plea, only a formal amendment can be made provided it is with leave of court and it does not prejudice the rights of the accused.[160] After arraignment, there can be no substantial amendment except if it is beneficial to the accused.[161]

Since only petitioner Samonte has been arraigned, only he can invoke this rule. Petitioner Corpus cannot invoke this argument because he has not yet been arraigned.

Once an accused is arraigned and enters his or her plea, Section 14

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157 *Rollo*, p. 490.

158 242 Phil. 655 (1988) [Per J. Padilla, Second Division].

159 *Rollo*, pp. 489–490.

160 *Matalam v. Second Division of the Sandiganbayan*, 495 Phil. 664. (2005) [Per J. Chico-Nazario, Second Division].

161 *Mendez v. People*, 736 Phil. 181 (2014) [Per J. Brion, Second Division] stated: "Once the accused is arraigned and enters his plea, however, Section 14 prohibits the prosecution from seeking a substantial amendment, particularly mentioning those that may prejudice the rights of the accused."

prohibits any substantial amendment especially those that may prejudice his or her rights. One of these rights includes the constitutional right of the accused to be informed of the nature and cause of the accusations against him or her, which is given life during arraignment.[162]

Arraignment is necessary to bring an accused in court and in notifying him or her of the cause and accusations against him or her.[163] "Procedural due process requires that the accused be arraigned so that he [or she] may be informed of the reason for his [or her] indictment, the specific charges he [or she] is bound to face, and the corresponding penalty that could be possibly meted against him [or her]."[164]

It is during arraignment that an accused is given the chance to know the particular charge against him or her for the first time.[165] There can be no substantial amendment after plea because it is expected that the accused will collate his or her defenses based on the contents of the information. "The theory in law is that since the accused officially begins to prepare his [or her] defense against the accusation on the basis of the recitals in the information read to him [or her] during arraignment, then the prosecution must establish its case on the basis of the same information."[166] Aside from violating the accused's right to due process, any substantial amendment in the information will burden the accused in preparing for his or her defense.

In a criminal case, due process entails, among others, that the accusation must be in due form and that the accused is given the opportunity to answer the charges against him or her.[167] There is a need for the accused to be supplied with the necessary information as to "why he [or she] is being proceeded against and not be left in the unenviable state of speculating why he [or she] is made the object of a prosecution, it being the fact that, in criminal cases, the liberty, even the life, of the accused is at stake."[168]

IV.B

Apart from violating the right of the accused to be informed of the nature and cause of his or her accusation, substantial amendments to the information after plea is prohibited to prevent having the accused put twice in jeopardy.

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[162] Id.
[163] *Kummer v. People*, 717 Phil. 670 (2013) [Per J. Brion, Second Division].
[164] Id. at 687.
[165] Id.
[166] *Mendez v. People*, 736 Phil. 192 (2014) [Per J. Brion, Second Division].
[167] *Buhat v. Court of Appeals*, 333 Phil. 562 (1996) [Per J. Hermosisima, Jr. , First Division].
[168] Id. at 575.

Article III,[169] Section 21 of the 1987 Constitution provides:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

The Constitutional provision on double jeopardy guarantees the invocation of the law not only against the danger of a second punishment or a second trial for the same offense, "but also against being prosecuted twice for the same act where that act is punishable by . . . law and an ordinance."[170] When a person is charged with an offense and the case against him or her is terminated either by acquittal or conviction or in any other way without his or her consent, he or she cannot be charged again with a similar offense.[171] Thus, "[t]his principle is founded upon the law of reason, justice and conscience."[172]

The constitutionally mandated right against double jeopardy is procedurally bolstered by Rule 117, Section 7 of the Revised Rules of Criminal Procedure,[173] which reads:

> RULE 117
> Motion to Quash
>
> . . . .
>
> Section 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.
>
> . . . .

In substantiating a claim for double jeopardy, the following requisites should be present:

> (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy

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169 Bill of Rights.
170 *Ada v. Virola*, 254 Phil. 341 (1989) [Per C.J Fernan, Third Division].
171 *Mallari v. People*, 250 Phil. 421 (1988) [Per J. Fernan, Third Division].
172 Id. at 424.
173 *Braza v. Sandiganbayan*, 704 Phil. 476 (2013) [Per J. Mendoza, Third Division].

must be for the same offense as in the first.[174]

With regard the first requisite, the first jeopardy only attaches:

> (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[175]

The test for the third requisite is "whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information."[176]

Also known as "*res judicata* in prison grey," the mandate against double jeopardy forbids the "prosecution of a person for a crime of which he [or she] has been previously acquitted or convicted."[177] This is to "set the effects of the first prosecution forever at rest, assuring the accused that he [or she] shall not thereafter be subjected to the danger and anxiety of a second charge against him [or her] for the same offense."[178]

People v. Dela Torre[179] underscored the protection given under the prohibition against double jeopardy:

> Double jeopardy provides three related protections: (1) against a second prosecution for the same offense after acquittal, (2) against a second prosecution for the same offense after conviction, and (3) against multiple punishments for the same offense.
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> . . . .
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> The ban on double jeopardy is deeply rooted in jurisprudence. The doctrine has several avowed purposes. ***Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials.*** It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty.[180] (Emphasis supplied, citations omitted)

Double jeopardy is a fundamental constitutional concept which

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174 Id. at 493.
175 Id. at 492.
176 Id.
177 *Caes v. Intermediate Appellate Court,* 258-A Phil. 620, 626 (1989) [Per J. Cruz, First Division].
178 Id. at 626–627.
179 430 Phil. 420 (2002) [Per J. Panganiban, Third Division].
180 Id. at 430.

guarantees that an accused may not be harassed with constant charges or revisions of the same charge arising out of the same facts constituting a single offense. When an accused traverses the allegations in the information by entering a plea during the arraignment, he or she is already put in jeopardy of conviction. Having understood the charges, the accused after entering a plea prepares for his or her defense based on the possible evidence that may be presented by the prosecution. The protection given to the accused by the double jeopardy rule does not attach only after an acquittal or a conviction. It also attaches after the entry of plea and when there is a prior dismissal for violation of speedy trial.

An arraignment, held under the manner required by the rules, grants the accused an opportunity to know the precise charge against him or her for the first time.[181] It is called for so that he or she is "made fully aware of possible loss of freedom, even of his [or her] life, depending on the nature of the crime imputed to him [or her]. At the very least then, he [or she] must be fully informed of why the prosecuting arm of the state is mobilized against him [or her]."[182] Thereafter, the accused is no longer in the dark and can enter his or her plea knowing its consequences.[183] It is at this stage that issues are joined, and without this, further proceedings cannot be held without being void.[184] Thus, the expanded concept of double jeopardy presupposes that since an accused can be in danger of conviction after his or her plea, the constitutional guarantee against double jeopardy should already apply.

IV.C

Any amendment to an information which only states with precision something which has already been included in the original information, and therefore, adds nothing crucial for conviction of the crime charged is only a formal amendment that can be made at anytime.[185] It does not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation.[186] Thus, the following are mere formal amendments:

> (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) an amendment which does not adversely affect any substantial right of the accused, such

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181 *Borja v. Mendoza,* 168 Phil. 83 (1977) [Per J. Fernando, Second Division].
182 Id. at 87.
183 Id.
184 *People v. Estomaca y Garque*, 326 Phil. 429 (1996) [Per J. Regalado, En Banc].
185 *People v. Montenegro*, 242 Phil. 655 (1988) [Per J. Padilla, Second Division].
186 *Ricarze v. Court of Appeals,* 544 Phil. 237 (2007) [Per J. Callejo, Sr., Third Division].

as his right to invoke prescription.[187] (Citations omitted)

On the other hand, "[a] substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court."[188]

The facts alleged in the accusatory part of the amended information are similar to that of the original information except as to the inclusion of Corpus as Samonte's co-accused and the insertion of the phrase "conspiring and confederating together." The allegation of conspiracy does not alter the basic theory of the prosecution that Samonte willfully and intentionally shot Angelito. Hence, the amendment is merely formal. As correctly pointed out by the Office of the Solicitor General:

> Even if one or all of the elements of the crime of murder as alleged in the original information filed against petitioner Samonte is not proven, the addition of conspiracy in the amended information, if duly proven, would not in any way result to his conviction because *conspiracy is not an essential or qualifying element of the crime of murder. The addition of conspiracy would only affect petitioner Corpuz, if together with the crime of murder leveled against petitioner Samonte, both circumstances are duly proven by the prosecution.*[189] (Emphasis supplied)

In *People of the Philippines v. Court of Appeals*,[190] this Court held that an allegation of conspiracy which does not change the prosecution's theory that the accused willfully shot the victim is merely a formal amendment.

In that case, two (2) informations for frustrated homicide were filed against accused Sixto Ruiz (Ruiz), who pleaded not guilty to both charges. A reinvestigation of these two (2) cases ensued in the Department of Justice, where the State Prosecutor filed a motion for leave of court to amend the information on the ground that the evidence revealed a *prima facie* case against Luis Padilla (Padilla) and Magsikap Ongchenco (Ongchenco) who acted in conspiracy with Ruiz. The trial judge denied the motion and reasoned that the allegation of conspiracy constitutes a substantial amendment. Consequently, the State Prosecutor filed two (2) new informations for frustrated homicide against Padilla and Ongchenco, which included the alleged conspiracy with Ruiz. Padilla and Ongchenco moved to quash the two (2) new informations, which was denied by the Court of First Instance of Rizal. Ruiz also filed a motion to permit to quash and/or strike out the allegation of conspiracy in the two (2) new informations. The trial judge ordered that the motions be stricken out from the records and explained that "the allegation of conspiracy in those cases does not alter the

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187 *Teehankee, Jr. v. Madayag*, 283 Phil. 956, 966 (1992) [Per J. Regalado, En Banc].
188 Id.
189 *Rollo*, p. 419.
190 *People v. Court of Appeals*, 206 Phil. 637 (1983) [Per J. Relova, First Division].

theory of the case, nor does it introduce innovation nor does it present alternative imputation nor is it inconsistent with the original allegations."[191] This prompted Ruiz, Padilla, and Ongchenco to file before the Court of Appeals a petition for certiorari with preliminary injunction, which was subsequently granted. However, this Court ruled:

> There is merit in this special civil action. The trial Judge should have allowed the amendment . . . considering that the *amendments sought were only formal.* As aptly stated by the Solicitor General in his memorandum, "*[T]here was no change in the prosecution's theory that respondent Ruiz wilfully[,] unlawfully and feloniously attacked, assaulted and shot with a gun Ernesto and Rogelio Bello* . . . The amendments would not have been prejudicial to him because his participation as principal in the crime charged with respondent Ruiz in the original informations, could not be prejudiced by the proposed amendments."[192] (Emphasis supplied)

In that case, the amended information was impelled by a disclosure implicating Padilla and Ongchenco. Thus,

> Otherwise stated, the amendments . . . would not have prejudiced Ruiz whose participation as principal in the crimes charged did not change. *When the incident was investigated by the fiscal's office, the respondents were Ruiz, Padilla and Ongchenco. The fiscal did not include Padilla and Ongchenco in the two informations because of "insufficiency of evidence." It was only later when Francisco Pagcalinawan testified at the reinvestigation that the participation of Padilla and Ongchenco surfaced and, as a consequence, there was the need for the amendment of the informations or the filing of new ones against the two.*[193] (Emphasis supplied)

The records of this present case show that the original information for murder against Samonte was dated June 5, 2008.[194] Based on Lozano's affidavit dated on June 30, 2008,[195] Corpus was implicated as the one who

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191 Id. at 640.
192 Id. at 641.
193 Id. at 642.
194 *Rollo*, p. 410.
195 Id. at 70–72. Lozano's affidavit stated, in part:
KARAGDAGANG SINUMPAANG SALAYSAY.
Ako ay si Alexander Lozano y Jacob, . . . ay malaya at kusang loob na nagsasalaysay gaya ng mga sumusunod:
. . . .
3. Na bago ako pumunta sa tanggapan ni Atty. Geminiano ay nagtungo muna ako sa Sangguniang Bayan lagpas alas-9 ng umagang iyon upang itanong kay Vice Mayor John Diego ang tungkol sa binhi ng palay na ipinamamahaging kasalukuyan ng munisipyo sa mga magsasaka.
4. Na papunta sa tanggapan ni Vice Mayor ay doon ako dumaan sa pasukan papuntang gym sa may likod ng opisina ni Mayor Amado "Jong" Corpus, Jr.
5. Na pagtapat ko sa tanggapan ni Mayor Corpus ay nakita ko si Carlito Samonte na may ibinubulong kay Mayor habang sila ay nandoroon sa labas sa may gilid ng tanggapan ni Mayor, at naging kapansin-pansin sa akin na ang sinasabi ni Samonte kay Mayor ano man iyon dahil pabulong ang pagsasalita niya ay ikinakagalit ni Mayor na bakas na bakas ko sa anyo ng mukha ng nahuli.
6. Na kitang-kita ko rin ng abotan ni Mayor si Samonte ng puting baril na eskwalado (stainless) at dinig na dinig ko ang sabay na pagalit na sinabi nito kay Samonte na *"Putang inang Lito yan! Sige!*

instructed Samonte to kill Angelito.[196] This prompted the prosecution to conduct a reinvestigation, which resulted in the filing of the amended information.[197]

IV.D

Petitioners quote the portion of *People v. Montenegro*[198] that cited the case of *People v. Zulueta*[199] as their basis for asserting that the allegation of conspiracy is a substantial amendment because it warrants a new defense for the accused:[200]

> Surely the preparations made by herein accused to face the original charges will have to be radically modified to meet the new situation. For undoubtedly the allegation of conspiracy enables the prosecution to attribute and ascribe to the accused Zulueta all the acts, knowledge, admissions and even omissions of his co-conspirator Angel Llanes in furtherance of the conspiracy. The amendment thereby widens the battlefront to allow the use by the prosecution of newly discovered weapons, to the evident discomfiture of the opposite camp. Thus it would seem inequitable to sanction the tactical movement at this stage of the controversy, bearing in mind that the accused is only guaranteed two-days' preparation for trial. Needless to emphasize, as in criminal cases, the liberty, even the life, of the accused is at stake, it is always wise and proper that he be fully apprised of the charges, to avoid any possible surprise that may lead to injustice. The prosecution has too many facilities to covet the added advantage of meeting unprepared adversaries.[201]

Zulueta is inapplicable. In that case, this Court declined the admission of the amended information because it would change the nature of the crime as well as the prosecution's theory:

> Indeed, contrasting the two informations one will perceive that whereas in the first the accused is charged with misappropriation of public property because: (1) he deceived Angel Llanes into approving the bargain sale of nails to Beatriz Poblete or (2) at least, by his abandonment he permitted that woman to obtain the articles at very cheap prices, in the amended information a third ground of responsibility is inserted, namely, that he connived and conspired with Angel Llanes to consummate the give-away transaction.
>
> Again it will be observed that the third ground of action in effect *contradicts the original theory of the information: if the accused conspired*

Birahin mo!"

. . . .

196 Id. at 514.

197 Id.

198 242 Phil. 655 (1988) [Per J. Padilla, Second Division].

199 89 Phil. 752 (1951) [Per J. Bengzon, Third Division].

200 *Rollo*, p. 491.

201 Id. at 491–492.

> *with Llanes, he did not deceive the latter, and did not by mere negligence permit the sale.*[202] (Emphasis supplied)

Additionally, *Montenegro* is also inapplicable in this case because the amendment to the information in that case was considered as substantial due to the effect of changing the original crime charged from Robbery under Article 209 to Robbery in an Uninhabited Place under Article 302 of the Revised Penal Code. With this, the accused were exposed to a charge with a higher imposable penalty than that of the original charge to which they pleaded "not guilty."[203] Furthermore:

> [T]he change in the items, articles and jewelries allegedly stolen into entirely different articles from those originally complained of, *affects the essence of the imputed crime, and would deprive the accused of the opportunity to meet all the allegations in the amended information, in the preparation of their defenses to the charge filed against them.* It will be observed that private respondents were accused as accessories-after-the-fact of the minor Ricardo Cabaloza who had already been convicted of robbery of the items listed in the *original* information. To charge them now as accessories-after-the-fact for a crime different from that committed by the principal, would be manifestly incongruous as to be allowed by the Court.[204] (Emphasis supplied)

The case cited by petitioners in this case rendered the addition of conspiracy in the amended information substantial because it either alters the defense of the accused or alters the nature of the crime to which the accused pleaded. However, the factual incidents of the cited cases are different from this present case because the allegation of conspiracy in the amended information did not change the prosecution's basic theory that Samonte willfully and intentionally shot Angelito.

IV.E

Rule 110, Section 14 similarly provides that in permitting formal amendments when the accused has already entered his or her plea, it is important that the amendments made should not prejudice the rights of the accused.[205] In *People v. Casey*,[206] this Court laid down the test in determining whether an accused is prejudiced by an amendment. Thus,

> The test as to whether a defendant is prejudiced by the amendment of an information has been said to be ***whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have***

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202 *People v. Zulueta*, 89 Phil. 752, 754 (1951) [Per J. Bengzon, Third Division].
203 *People v. Montenegro*, 242 Phil. 655 (1988) [Per J. Padilla, Second Division].
204 Id. at 662.
205 *Pacoy v. Cajigal*, 560 Phil. 598 (2007) [Per J. Austria-Martinez, Third Division].
206 190 Phil. 748 (1981) [Per J. Guerrero, En Banc].

> ***would be equally applicable to the information in the one form as in the other.*** A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance — not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 of the Revised Rules of Court.[207] (Emphasis supplied, citations omitted)

It is undisputed that upon arraignment under the original information, Samonte admitted the killing but pleaded self-defense.[208] While conspiracy is merely a formal amendment, Samonte will be prejudiced if the amendment will be allowed after his plea. Applying the test, his defense and corresponding evidence will not be compatible with the allegation of conspiracy in the new information. Therefore, such formal amendment after plea is not allowed.

V.A

Petitioners claim that the assailed warrant of arrest was made in utter disregard of the constitutional mandate which directs judges to personally conduct an independent examination, under oath or affirmation, of the complainant and the witnesses he or she may produce.[209] They further assert that the assailed February 26, 2009 Order only consists of three (3) short sentences that merely contain a certain legal provision, instead of facts that will supposedly substantiate the issuance of a warrant of arrest.[210]

Article III, Section 2 of the Constitution reads:

> Article III
> Bill of Rights
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> . . . .
>
> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and 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*, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

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207 Id. at 759.
208 *Rollo*, p. 410.
209 Id. at 476.
210 Id. at 477.

In *Soliven v. Makasiar*,[211] the issue raised by the petitioner in that case called for the interpretation of Article III, Section 2 of the Constitution. It is apparent that the inclusion of the word "personally" after the word "determined" and the removal of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law" has persuaded the petitioner to believe that what the Constitution now requires is for the "judge to personally examine the complainant and his witnesses"[212] in determining probable cause for the issuance of a warrant. However, this Court ruled that this is not an accurate interpretation.

In that case, this Court underscored that the Constitution gives emphasis on the "exclusive and personal responsibility of the issuing judge to satisfy himself the existence of probable cause."[213] In convincing himself or herself on the presence of probable cause for the issuance of a warrant, the issuing judge "is ***not*** required to personally examine the complainant and his witnesses."[214] "Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts."[215]

In the 1987 Constitution, the judge is required to "*personally*" determine the existence of probable cause.[216] This requirement, however, does not appear in the corresponding provisions found in our previous Constitutions.[217] This gives prominence to the framers' intent of placing "greater degree of responsibility upon trial judges than that imposed under previous Constitutions."[218]

Probable cause cannot be merely established by showing that a trial judge subjectively believes that he or she has good grounds for his or her action.[219] Thus, good faith does not suffice because if "subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be *'secure in their persons, houses, papers and effects'* only in the fallible discretion of the judge."[220] Before issuing a warrant of arrest, the judge must satisfy himself or herself that based on the evidence presented, a crime has been committed and the person to be arrested is probably guilty of it.[221]

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211 249 Phil. 394 (1988) [Per Curiam, En Banc].
212 Id. at 399.
213 Id.
214 Id.
215 Id. at 399–400.
216 *Abdula v. Guiani,* 382 Phil. 757 (2000) [Per J. Gonzaga-Reyes, Third Division].
217 Id.
218 Id. at 773.
219 *Allado v. Diokno,* 302 Phil. 213 (1994) [Per J. Bellosillo, First Division].
220 Id. at 235.
221 *Ho v. People,* 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].

In *Lim v. Felix*,[222] the ruling in *Soliven* was reiterated. The main issue raised in *Lim* is whether a judge may issue a warrant of arrest without bail "by simply relying on the prosecution's certification and recommendation that a probable cause exists."[223] In that case, the preliminary investigation records conducted by the Municipal Court of Masbate were still in Masbate. However, the Regional Trial Court Judge of Makati still issued a warrant of arrest against the petitioners. This Court ruled that the respondent judge "committed a grave error when he relied solely on the Prosecutor's certification and issued the questioned Order . . . without having before him any other basis for his personal determination of the existence of a probable cause"[224] and reasoned that:

> At the same time, the Judge cannot ignore the clear words of the 1987 Constitution which requires ". . . probable cause to be *personally* determined by the judge . . ." not by any other officer or person.
>
> If a Judge relies *solely on the certification of the Prosecutor as in this case where all the records of the investigation are in Masbate, he or she has* ***not*** *personally determined probable cause. The determination is made by the Provincial Prosecutor. The constitutional requirement has not been satisfied. The Judge commits a grave abuse of discretion.*
>
> The records of the preliminary investigation conducted by the Municipal Court of Masbate and reviewed by the respondent Fiscal were still in Masbate when the respondent Fiscal issued the warrants of arrest against the petitioners. *There was no basis for the respondent Judge to make his own personal determination regarding the existence of a probable cause for the issuance of a warrant of arrest as mandated by the Constitution. He could not possibly have known what transpired in Masbate as he had nothing but a certification.* Significantly, the respondent Judge denied the petitioners' motion for the transmittal of the records on the ground that the mere certification and recommendation of the respondent Fiscal that a probable cause exists is sufficient for him to issue a warrant of arrest.
>
> We reiterate the ruling in *Soliven v. Makasiar* that the Judge does not have to personally examine the complainant and his witnesses. The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. *However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.*
>
> *The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be*

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222 272 Phil. 122 (1991) [Per J. Gutierrez, Jr., En Banc].
223 Id. at 130.
224 Id. at 138.

> *sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.*
>
> . . . .
>
> We reiterate that in making the required personal determination, a Judge is not precluded from relying on the evidence earlier gathered by responsible officers. The extent of the reliance depends on the circumstances of each case and is subject to the Judge's sound discretion. However, the Judge abuses that discretion when having no evidence before him, he issues a warrant of arrest.[225] (Emphasis supplied)

Soliven provided that as dictated by sound policy, an issuing judge is not required to personally examine the complainant and his witnesses as long as he or she has satisfied himself or herself of the existence of probable cause.[226] To rule otherwise would unduly burden judges with preliminary examination of criminal complaints instead of attending to more important matters. However, due to recent developments in the legal system which include the judicial affidavit rule, the evil sought to be prevented in *Soliven* does not exist anymore. To minimize the time required for completing testimonies of witnesses in litigated cases, this Court approved the use of judicial affidavits in lieu of witnesses' direct testimonies.[227] Thus, this is more in tune with the Constitutional mandate by lessening the burden imposed upon judges by expediting litigation of cases for them to attend to their exclusive and personal responsibility of satisfying themselves with the existence of probable cause when issuing a warrant.

V.B

Rule 112, Section 6 of the Revised Rules of Criminal Procedure provides:

> RULE 112
> Preliminary Investigation
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> . . . .
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> Section 6. *When Warrant of Arrest May Issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, *the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.* He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a

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225 Id. at 135–137.

226 *Soliven v. Makasiar*, 249 Phil. 394 (1988) [Per Curiam, En Banc].

227 *Judicial Affidavit Rule*, A.M. No. 12-8-8-SC (2012).

> warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis supplied)

Pursuant to the provision, the issuing judge has the following options upon the filing of an Information:

> (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.[228] (Citation omitted)

It is required for the judge to "personally evaluate the resolution of the prosecutor and its supporting evidence."[229] In case the evidence on record fails to substantiate probable cause, the trial judge may instantly dismiss the case.[230]

The records of this case reveal that the February 26, 2009 Order presented a discussion showing both the factual and legal circumstances of the case from the filing of the original information until the filing of the Motion to Amend Information. Respondent Judge Pamular, therefore, is familiar with the incidents of this case, which were his basis for issuing the warrant. Thus, before he issued the assailed Order and warrant, a hearing was conducted on February 13, 2009 regarding the motions and manifestations filed in the case:[231]

> On February 13, 2009, a hearing was held wherein the parties presented their arguments. On the issue regarding the undated motion to amend information without notice of hearing and the motion for reconsideration filed by the prosecution, the court ruled that the same is moot and academic due to the conduct of the said hearing. [232]

Furthermore, respondent Judge Pamular has a working knowledge of the circumstances regarding the amended information that constrained him to find probable cause in issuing the warrant. The pertinent portion of the Order provided:

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228 *Ong v. Genio,* 623 Phil. 835, 843 (2009) [Per J. Nachura, Third Division].
229 Id.
230 Id.
231 *Rollo,* p. 51.
232 Id. at 52.

> Elementary is the rule that the existence of probable cause is indispensable in the filing of complaint or information and in the issuance of warrant of arrest. The legion of jurisprudence has defined probable cause to be concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man and not the exacting calibrations of a judge after a full blown trial. No law or rule states that probable cause requires a specific kind of evidence. It is determined in the light of conditions obtaining in a given situation.[233]

In respondent Judge Pamular's Comment, he claimed that:

> Be that as it may, still, the undersigned respondent judge made a careful perusal of the records of the case. ***Sufficient copies of supporting documents and/or evidence were read and evaluated upon which, independent judgment as to the existence of probable cause was based.*** But, then again, still not satisfied, the undersigned even went beyond the face of the resolution and evidences (sic) presented before this Court. On 13 February 2009, Criminal Case No. 2618-G was set for hearing. The prosecution and the defense were given the chance to argue on the matter and ample opportunity to be heard.[234] (Emphasis supplied)

Apart from respondent judge's personal examination of the amended information and supporting documents, the hearing conducted on February 13, 2009 enabled him to find probable cause prompting him to issue the warrant of arrest.[235]

VI

On March 19, 2014, Priscilla filed a Manifestation,[236] which provides that on October 30, 2013, Samonte executed an affidavit[237] stating that Corpus ordered him to kill Angelito.[238]

Settled is the rule that this Court is not a trier of facts.[239] These matters are left to the lower courts, which have "more opportunity and facilities to examine these matters."[240] This Court is not a trier of facts and cannot receive new evidence that would aid in the speedy resolution of this case.[241] It is not this Court's function to "analyze and weigh the evidence all over again."[242]

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233 Id. at 53.
234 Id. at 281–282.
235 Id.
236 Id. at 556–558.
237 Id. at 559–560.
238 Id. at 556.
239 *Bernardo v. Court of Appeals*, 290 Phil. 649 (1992) [Per J. Campos, Jr., Second Division].
240 Id. at 658.
241 *Land Bank of the Phils. v. Livioco*, 645 Phil. 337 (2010) [Per J. Del Castillo, First Division].
242 *Alicer v. Compas*, 664 Phil. 730 (2011) [Per J. Carpio, Second Division].

Therefore, based on the foregoing, this Court remands this case to the Regional Trial Court for it to pass upon this factual issue raised by petitioner Samonte based on his October 30, 2013 affidavit.

WHEREFORE, premises considered, the Petition for Certiorari is **PARTIALLY GRANTED.** The case is remanded to the Regional Trial Court of Guimba, Nueva Ecija for its preliminary examination of probable cause for the issuance of a warrant of arrest and thereafter proceed to the arraignment of petitioner Amado Corpus, Jr.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
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.

DIOSDADO M. PERALTA
Associate Justice
Chairperson

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.

TERESITA J. LEONARDO-DE CASTRO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
NOV 15 2018