



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DATU AKMAD "TATO" G.R. No. 200106
AMPATUAN, SR.,
Petitioner, Present:

-versus-

LEONEN, J., *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

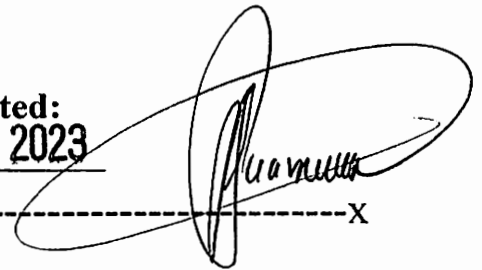
HON. SECRETARY OF JUSTICE,
FAMILIES OF THE MURDERED
VICTIMS, ATTY. CONCEPCION
BRIZUELA y JAIME, GENALIN
MANGUDADATU y TIAMSON,
EDEN MANGUDADATU y
GAGUIL, FARINAH HASSAN,
SURAYDA BERNAN y GAGUIL,
MAMOTABAI MANGUDADATU,
WAHIDA KALIM y ALI,
ROWENA ANTE y
MANGUDADATU, RAIDA
ABDUL y SAPALON, FARINAH
SABDULLAH y CAGUIL, PINKY
BAYLMAN, MARIFE MONTANO
y CARDOVA, ROSELL
MORALES y VIVAS, EUGENE
DEMILLO y PAMANSAG,
BIENVENIDO LEGARTA,
MARITES CABLITAS, NORTON
SEDICK EDZA y EBUS, RAZUL
DAUD y BULILO, ANDRES M.
TEODORO, ABDILLAH AYADA,
WILHEM S. PALABRICA,
ALEJANDRO M. REBLANDO,
JOHN CANIBAN, MERCY

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PALABRICA, CATALINO
 OQUENDO, JR., CYNTHIA
 OQUENDO-AYON, FRANCISCO
 IAN SUBANG, JR., NOEL
 DECENA, ANTHONY A. RIDAO,
 RAHIMA P. PALAWAN,
 NAPELEON SALAYSAY,
 ELEONOR LEAH DALMACIO,
 MERIAM CALIMBOL,
 HANNIBAL D. CACUELA,
 JEPHON CADAGDAGON, MAC
 DELBERT (MACMAC) AREOLA,
 ROMEO JIMMY "PAL-AK"
 CABILLO, SANTOS "JUNPEE"
 GATCHALIAN, JR., ARTURO
 BETIA, REY V. MERISCO, JOEL
 V. PARCON, JOSE "JOY"
 DUHAY, RONNIE L. PERANTE,
 RUBELLO R. BATALUNA,
 BENGIE H. ADOLFO, HENRY H.
 ARANETA, ERNESTO "BOMBO
 BART" S. MARAVILLA, JR.,
 JOLITO EVARDO, DANIEL
 TIAMZON, VICTOR O. NUÑEZ,
 EDUARDO D. LECHONSITO,
 CECILLE LECHONSITO,
 FERNANDO "RANNY" P.
 RAZON, LINDO LUPOGAN, and
 DARYLL VINCENT DELOS
 REYES,

Respondents.

Promulgated:
FEB 22 2023



X-----X

DECISION

LEONEN, J.:

The finding of probable cause in a preliminary investigation is within the sole discretion of the prosecution. Courts should not interfere absent any grave abuse of discretion. The investigation, being preliminary, is not the venue for an exhaustive display of evidence. It merely seeks to determine if there is reasonable ground for respondent to have committed the crime, and to hold them for trial. It does not seek to determine respondent's guilt beyond reasonable doubt. Thus, a subsequent acquittal by the trial court will not necessarily invalidate a prior finding of probable cause.



This Court resolves the Petition for Review on *Certiorari*¹ assailing the Decision² and Resolution³ of the Court of Appeals, which upheld the Resolution⁴ of the Secretary of Justice finding probable cause to charge Datu Akmad “Tato” Ampatuan, Sr. (Tato) as one of the conspirators of the Maguindanao Massacre.

On November 23, 2009, a convoy of about six vehicles was sent by Esmael “Toto” Mangudadatu to file on his behalf his certificate of candidacy for governor of Maguindanao for the 2010 National and Local Elections.⁵ The passengers of the vehicles were as follows:

1. Atty. Concepcion Brizuela y Jayme - lawyer
2. Bai Genalin Mangudadatu y Tiamson - wife of Esmael Mangudadatu
3. Bai Eden Mangudadatu y Gaguil - sister of Esmael Mangudadatu
4. Bai Farinah Hassan – sister of Esmael Mangudadatu
5. Surayda Bernan y Gaguil - relative of Esmael Mangudadatu
6. Mamotabai Mangudadatu - relative of Esmael Mangudadatu
7. Wahida Kalim y Ali – relative of Esmael Mangudadatu
8. Rowena Ante y Mangudadatu - aunt of Esmael Mangudadatu
9. Raida Abdul y Sapalon – relative of Esmael Mangudadatu
10. Faridah Sabdullah y Gaguil – relative of Esmael Mangudadatu
11. Pinky Balayman – relative of Esmael Mangudadatu
12. Gina Dela Cruz y Carpenteros – Saksi correspondent
13. Lailani Balayman – supporter of Esmael Mangudadatu
14. Marife Montaña y Cordova – Saksi, Balita, dxCP correspondent
15. Rosell Morales y Vivas – News Focus circulation manager and correspondent
16. Eugene Demillo y Pamansag – supporter of Esmael Mangudadatu
17. Bienvenido Legarta – Prontiera News, Tingog Mindanao publisher
18. Marites Cablitas – News Focus publisher, RPN dxDX publisher and anchor
19. Norton “Sedick” Edza y Ebus – van driver
20. Razul Daud y Bulilo – van driver
21. Andres M. Teodoro – Mindanao Inquirer, Peoples Forum editor-in-chief, columnist
22. Abdillah Ayada – supporter of Esmael Mangudadatu

¹ *Rollo*, pp. 14–50.

² *Id.* at 51–87. The August 18, 2011 Decision in CA-G.R. SP No. 114355 was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S. E. Veloso (Chair) and Angelita A. Gacutan of the Sixteenth Division, Court of Appeals, Manila.

³ *Id.* at 88–90. The January 3, 2012 Resolution was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S. E. Veloso and Angelita A. Gacutan of the Former Sixteenth Division, Court of Appeals, Manila.

⁴ *Id.* at 124–155. The May 5, 2010 Resolution was penned by Department of Justice Acting Secretary Alberto C. Agra.

⁵ *Id.* at 53. The Philippine National Police Report, however, states that there were nine vehicles (*rollo*, p. 173) while the DOJ Joint Resolution (*rollo*, p. 203) states that there were eight vehicles.

23. Wilhem S. Palabrica – Tacurong City employee
24. Alejandro M. Reblando – Manila Bulletin, Reuters correspondent, stringer
25. John Caniban – Periodico Ini, Sultan Kudarat Gazette news bureau chief
26. Mercy Palabrica – Tacurong City employee
27. Catalino Oquendo, Jr. – retired City Treasurer of Tacurong
28. Atty. Cynthia Oquendo-Ayon – lawyer
29. Francisco “Ian” Subang, Jr. – Socsargen News Today publisher
30. Noel Decena – Periodico Ini circulation manager
31. Anthony A. Ridao – employee
32. Rahima P. Palawan – supporter of Esmael Mangudadatu
33. Napoleon Salaysay – Clear View Gazette publisher, editor
34. Eleonor “Leah” Dalmacio – Socsargen News Today reporter
35. Meriam Calimbol – supporter of Esmael Mangudadatu
36. Hannibal D. Cachuela – Manila Star, Punto News bureau chief, correspondent
37. Jephon Cadagdagon – Saksi Balita correspondent, photographer
38. Mac Delbert (Macmac) Areola – UNTV camera operator
39. Romeo Jimmy “Pal-ak” Cabillo – Midland Review
40. Santos “Junpee” Gatchalian, Jr. – Mindanao Daily Gazette reporter
41. Arturo Betia – Periodico Ini marketing director
42. Rey V. Merisco – Periodico Ini columnist
43. Joel V. Parcon – Frontiera News correspondent
44. Jose “Joy” Duhay – Gold Star Daily correspondent
45. Ronnie L. Perante – Gold Star Daily correspondent
46. Rubello R. Bataluna – Gold Star Daily correspondent
47. Bengie H. Adolfo – Gold Star Daily support personnel
48. Henry H. Araneta – DZRH Central Mindanao correspondent
49. Ernesto “Bombo Bart” S. Maravilla, Jr. – Bombo Radyo Koronadal City anchor, reporter
50. Jolito Evarado – UNTV camera operator
51. Daniel Tiamzon – UNTV driver
52. Victor O. Nuñez – UNTV anchor
53. Eduardo D. Lichonsito – Tacurong City employee
54. Cecille Lichonsito – Tacurong City employee
55. Fernando “Ranny” P. Razon – Periodico Ini sales manager
56. Lindo Lupogan – Metro Gazette (Davao City) correspondent
57. Daryll Vincent Delos Reyes – Tacurong City employee
58. Reynaldo “Bebot” Momay – Midland Review photographer⁶

At around 10:00 am, the convoy was stopped at a checkpoint in Sitio Malating, Barangay Salman, Ampatuan, Maguindanao. The checkpoint was secured by members of the 1508th Provincial Mobile Group of Camp Datu Akilan, Shariff Aguak, Maguindanao.⁷

⁶ Id. at 205–209.

⁷ Id. at 53.

While the inspection was ongoing, a group of heavily armed men, allegedly led by then Maguindanao Mayor Datu Andal “Unsay” Ampatuan, Jr. (Andal) swooped in and ordered the passengers of the convoy to step out of their vehicles and lie on the ground. Their personal belongings were taken from them, as well as their laptops, mobile phones, and cameras.⁸ After, the passengers were ordered by Andal to go back to their vehicles. The armed men, however, drove the vehicles and led the convoy to the Municipality of Ampatuan, Maguindanao. Gunfire was later heard in Barangay Saniag of the same municipality.

At about 2:30 p.m., military and police were sent to the area where they spotted the six vehicles that were part of the convoy. After the crime scene was identified, military and police were able to recover 57 mutilated and mangled corpses bearing multiple gunshot wounds. The bodies were later identified as the passengers of the Mangudadatu convoy.⁹

Andal was arrested on November 26, 2009. Inquest proceedings followed. On the same day, the National Bureau of Investigation filed a Complaint against Andal for abduction, multiple counts of murder, robbery, and damage to property. This Complaint was endorsed to the Department of Justice Panel of Investigating Prosecutors.¹⁰

On November 27, 2009, the Department of Justice Panel of Prosecutors issued a Resolution directing the filing of an Information against Andal and for the issuance of a subpoena to several others, including Tato.¹¹ The disposition reads:

WHEREFORE, premises considered, let the corresponding informations for Murder as provided for under Art. 248 of the Revised Penal Code be filed against DATU ANDAL AMPATUAN, JR. alias UNSAY and several John Does in the proper court.

In the meantime, let subpoenas be issued against respondents DATU ANDAL U. AMPATUAN, SR., NORDS AMPATUAN, AKMAD AMPATUAN, SAUDI AMPATUAN, JR., BAHNARIN A. AMPATUAN, SAJID ISLAN AMPATUAN, AKMAD “TATO” AMPATUAN, SR., and ZALDY “PUTI” U. AMPATUAN and other respondents for them to submit their respective counter-affidavits and other controverting evidence conformably with Section 3, Rule 112, Rules on Criminal Procedure.

SO RESOLVED.¹²

⁸ Id. at 173.

⁹ Id. at 173–174. Reynaldo “Bebot” Momay’s corpse has not been recovered.

¹⁰ Id. at 54.

¹¹ Id.

¹² Id. at 54–55.

In a letter dated December 10, 2009, the Philippine National Police Criminal Investigation Detection Group informed the Department of Justice that it was impleading more than 100 individuals who allegedly participated in the offense. The National Bureau of Investigation also submitted additional pieces of evidence, such as affidavits, to support their November 26, 2009 Complaint.¹³

In the meantime, Tato filed his counter-affidavit,¹⁴ alleging that the affidavit of a certain Kenny Dalandag (Dalandag affidavit) failed to show his direct or indirect participation in the crime. Tato alleged that on November 22, 2009, he was at his residence preparing for a medical mission the next day in Mamasapano, Maguindanao. Tato alleged that he was present at the medical mission in the municipal gymnasium from 7:00 a.m. to 5:00 p.m.¹⁵ To support his allegations, he submitted a joint affidavit by Totoy Monroy Kesid, Mansor N. Akmad and Alhamde A. Kadtong, who were allegedly with him at the municipal gymnasium. He also submitted photographs of the medical mission.¹⁶

On February 5, 2010, the Department of Justice Panel of Prosecutors issued a Joint Resolution¹⁷ finding probable cause for multiple murder against 103 respondents. The dispositive portion reads:

WHEREFORE, it is respectfully recommended that the following respondents be indicted for 57 Multiple Murder[s]:

....

4. Datu Akmad "Tato" Ampatuan, Sr.

....

It is likewise respectfully recommended that the attached amended Informations impleading the aforesaid respondents be forthwith approved for filing in the proper court.¹⁸

Tato filed a Petition for Review¹⁹ of this Joint Resolution, alleging that he was not impleaded as a respondent in the complaints or affidavits submitted by the National Bureau of Investigation and the Philippine National Police Criminal Investigation and Detection Group. He argued that his name was mentioned only in the sworn statements of Esmael Mangudadatu and Nasser Abdul, which were not enough to establish the presence of conspiracy. He likewise asserted that the Dalandag affidavit did not mention him as among those present in the planning meeting held at

¹³ Id. at 55.

¹⁴ Id. at 193–195.

¹⁵ Id. at 55–56.

¹⁶ Id. at 428–435.

¹⁷ Id. at 197–274.

¹⁸ Id. at 266–271.

¹⁹ Id. at 275–298.

Datu Andal Ampatuan, Sr.'s house on November 22, 2009.²⁰

On April 16, 2010, then Secretary of Justice Alberto C. Agra (Secretary Agra) issued a Resolution²¹ granting Tato's Petition, finding that he was not present at or near the crime scene and that the Dalandag affidavit did not mention him as being present during the November 22, 2009 planning meeting at Shariff Aguak, Maguindanao.²² The dispositive portion reads:

WHEREFORE, the petitions for review of respondents Datu Andal Ampatuan Sr. and Datu Anwar U. Ampatuan are hereby DISMISSED. However, insofar as the petitions for review of respondents Datu Zaldy "Puti" U. Ampatuan and Datu Akmad "Tato" Ampatuan Sr. are concerned, the assailed resolution is hereby MODIFIED. The Acting Provincial Prosecutors of Maguindanao are directed to immediately file amended informations in Criminal Case Nos. Q-09-162148 to Q-09-162172, Q-09-162216 to Q-09-162231 and Q-10-162652 to Q-10-162666, all for murder, to the exclusion of respondents Datu Zaldy "Puti" U. Ampatuan and Datu Akmad "Tato" Ampatuan Sr., and to report the action taken within five (5) days from receipt hereof.

SO ORDERED.²³

Several motions for reconsideration of this Resolution were filed, among which was the Motion for Reconsideration filed by Atty. Nena Santos, Atty. Prima Jesus B. Quinsayas, and Atty. Ma. Gemma Oquenda on behalf of their clients. They also filed a Supplemental Motion for Reconsideration,²⁴ attaching the affidavit of Abdul Talusan y Ogalingan (Talusan affidavit), which alleged that Tato was present at the planning meeting on November 22, 2009.²⁵

In a Resolution²⁶ dated May 5, 2010, Secretary Agra reconsidered his earlier Resolution and found probable cause for multiple murders against Tato based on the Talusan affidavit. The Acting Provincial Prosecutors of Maguindanao were ordered to reinstate the criminal Informations in Criminal Case Nos. Q-09-162148 to Q-09-162172, Q-09-162216 to Q-09-162231 and Q-10-162652 to Q-10-162666, all for murder, against Datu Zaldy "Puti" U. Ampatuan and Tato.²⁷

Tato filed a Petition for *Certiorari*²⁸ with the Court of Appeals, arguing that the Secretary of Justice committed grave abuse of discretion

²⁰ Id. at 57.

²¹ Id. at 156–172.

²² Id. at 166.

²³ Id. at 167.

²⁴ Id. at 319–322. The Supplemental Motion for Reconsideration was filed on April 30, 2010.

²⁵ Id. at 58–59.

²⁶ Id. at 124–155.

²⁷ Id. at 150.

²⁸ Id. at 331–366.

when he allowed the presentation of new evidence. He also claimed that he was denied due process as he was not given a copy of the Motion for Reconsideration or allowed to file his counter-affidavit to this Motion.

Tato likewise pointed out that the case should have been remanded to the Panel of Prosecutors, since the Talusan affidavit was not among the records of the preliminary investigation, and therefore should not be considered. The Secretary of Justice, on the other hand, argued that the Court of Appeals should not have taken cognizance of the case since jurisdiction was now with the trial court.²⁹

In a Decision,³⁰ the Court of Appeals denied the Petition and affirmed the Secretary of Justice's Resolution.³¹ The Court of Appeals conceded that while jurisdiction was now with the trial court upon the filing of the information, it was not precluded from taking cognizance of petitions alleging grave abuse of discretion on the part of the Secretary of Justice.³²

On the substantive issues, the Court of Appeals found that the Secretary of Justice is not precluded from receiving additional evidence on a motion for reconsideration. To rule otherwise would be to curtail the Secretary of Justice's power of control and supervision over their subordinates, and their obligation to make an independent assessment of the evidence.³³

In any case, the Court of Appeals held that while there is a prohibition against the introduction of new evidence in a motion for reconsideration under Rule 37, Section 1 of the Rules of Court, the same prohibition is not provided for under Department of Justice Department Circular No. 70 of the 2000 National Prosecution Service (NPS) Rule on Appeal, which governs appeals from resolutions of prosecutors in relation to preliminary investigations or reinvestigations.³⁴

It found that the Talusan affidavit was neither new nor additional evidence since it merely corroborated the earlier Dalandag affidavit that Tato was present at the November 22, 2009 planning meeting. The assessment of the Talusan affidavit need not be remanded to the Panel of Prosecutors since the 2000 National Prosecution Service Rule on Appeal leaves the Secretary of Justice with the discretion to determine whether a case should be reinvestigated.³⁵

²⁹ Id. at 60.

³⁰ Id. at 51–87. The August 18, 2011 Decision in CA-G.R. SP No. 114355 was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S. E. Veloso (Chair) and Angelita A. Gacutan of the Sixteenth Division, Court of Appeals, Manila.

³¹ Id. at 86.

³² Id. at 62–65.

³³ Id. at 68–70.

³⁴ Id. at 70–71.

³⁵ Id. at 72–74.

The Court of Appeals also found that Tato's right to due process was not violated since he was able to file his counter-affidavit during the preliminary investigation and to submit evidence to support his allegations. It likewise pointed out that he chose to file a Petition for *Certiorari* with the Court of Appeals.³⁶

Upon a review of the records of the case and the evidence presented, the Court of Appeals held that the Secretary of Justice did not gravely abuse his discretion when he found probable cause to charge Tato with multiple counts of murder. It found that whether Tato had been positively identified as present during the November 22, 2009 planning meeting or at the November 23, 2009 crime scene are matters that are better resolved during trial which is not the proper venue to determine whether Tato was guilty beyond reasonable doubt.³⁷

Tato moved for reconsideration, which the Court of Appeals denied in a Resolution.³⁸

Hence, the present Petition.³⁹

In the interim, petitioner submitted an Urgent Manifestation and Motion (with Leave of Court),⁴⁰ praying that a status quo ante order be issued against the Regional Trial Court of Quezon City, Branch 221 to suspend the proceedings in the murder cases against him, including his arraignment scheduled on August 7, 2013.⁴¹

On July 31, 2013, this Court issued a Resolution⁴² denying petitioner's motion for the issuance of a status quo ante order.

The Regional Trial Court of Quezon City, Branch 221 later rendered its Decision⁴³ in Criminal Case Nos. Q-09-162148 to Q-09-162172, Q-09-162216 to Q-09-162231 and Q-10-162652 to Q-10-162666 acquitting petitioner on the ground of reasonable doubt.

³⁶ Id. at 74–75.

³⁷ Id. at 79–86.

³⁸ Id. at 88–90. The January 3, 2012 Resolution was penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S. E. Veloso (Chair) and Angelita A. Gacutan of the Former Sixteenth Division, Court of Appeals, Manila.

³⁹ Id. at 14–50.

⁴⁰ Id. at 1720–1730.

⁴¹ Id. at 1721–1722.

⁴² Id. at 1734.

⁴³ See *People v. Datu Andal "Unsay" Ampatuan, Jr.*, Criminal Case Nos. 09-162148-72, Q-09-162216-31, Q-10-162652-66, Q-10-163766, GL-Q-12-178638, December 19, 2019. [Per Judge Jocelyn Solis-Reyes, Branch 221, Regional Trial Court, Quezon City].

Petitioner's acquittal would render this Petition moot. However, this Petition presents legal questions that would otherwise remain unanswered if not completely resolved. Thus, despite the mootness of the action, this Court will nonetheless pass upon the parties' arguments.

Petitioner reiterates that the cases against him were without any legal or factual basis.⁴⁴ He alleges that his "only error of fault is that his family name is 'AMPATUAN.'"⁴⁵ Petitioner alleges that he had sufficiently shown that he was in a medical mission in Mamasapano on November 23, 2009,⁴⁶ and that he had neither been impleaded nor mentioned in the investigations conducted by the Department of Justice Panel of Prosecutors.⁴⁷ He points out that the Dalandag affidavit did not mention his presence in the November 22, 2009 meeting,⁴⁸ and the sworn statements of Esmael Mangudadatu and Nasser Abdul testifying on his presence in a rally supporting the Ampatuans were insufficient to prove conspiracy.⁴⁹

Respondent Secretary of Justice counters that the Petition should be dismissed outright, since it raises factual questions in a Rule 45 petition, such as the probative value of the Talusan affidavit. Furthermore, the Petition also raises whether petitioner was deprived of his substantive rights during the preliminary investigation, and whether there was probable cause to charge him with murder.⁵⁰ It argues that these arguments are matters of defense and are best addressed during the trial.⁵¹

Respondent Secretary of Justice further contends that it did not commit grave abuse of discretion when it issued its May 5, 2010 Resolution, considering that it had full control and supervision over all prosecutors in the course of preliminary investigation. Furthermore, respondent is not precluded by the 2000 National Prosecution Service Rule on Appeal from receiving further evidence on appeal or motion for reconsideration.⁵² It added that the Supplemental Motion for Reconsideration containing the Talusan affidavit did not rehash issues prior to the resolution of the first Motion for Reconsideration.⁵³

It asserts that petitioner had not been denied due process since he was able to file several pleadings raising his defense of alibi, against which the evidence in the Supplemental Motion for Reconsideration was reviewed.⁵⁴ It argues that petitioner's alleged non-receipt of the Talusan affidavit and his

⁴⁴ *Rollo*, p. 2609-F.

⁴⁵ *Id.* at 2609-G.

⁴⁶ *Id.* at 2609-T.

⁴⁷ *Id.* at 2609-M-2609-N.

⁴⁸ *Id.* at 2609-N.

⁴⁹ *Id.* at 2609-R.

⁵⁰ *Id.* at 1968-1969.

⁵¹ *Id.* at 1969-1970.

⁵² *Id.* at 1973-1980.

⁵³ *Id.* at 1990-1993.

⁵⁴ *Id.* at 1994-1995.

alleged denial to controvert its contents cannot be considered a denial of due process since preliminary investigation had already been conducted and the Secretary of Justice can order the filing of the Information without another preliminary investigation on this particular affidavit.⁵⁵

Respondent Secretary of Justice contends that there was probable cause to indict petitioner with murder and that the issue of the witness's credibility against his should be weighed at trial, not at preliminary investigation.⁵⁶ It likewise points out that on September 8, 15, and 29, 2010, state witness Lakmodin Saliao testified before the Regional Trial Court that petitioner had participated in the planning of the murder and was present during the November 22, 2009 meeting, showing that the finding of probable cause was based on corroborative statements of the witnesses.⁵⁷

Respondent Heirs of Mangudadatu et al.,⁵⁸ Heirs of Betia, and Heirs of Lupogan et al.⁵⁹ likewise agree with the Secretary of Justice and adds that petitioner had already been denied bail as of January 9, 2015 and that several witnesses, namely that of Lakmodin Saliao, Esmael Mangudadatu, Efren Macanas, Ibrahim "Jong" Mangudadatu, and Sukarno L. Badal have already testified on petitioner's involvement in the crime.⁶⁰

Respondent Heirs of Betia also agrees with the Secretary of Justice that the Supplemental Motion for Reconsideration was not a prohibited pleading and that petitioner had not been denied due process.⁶¹ They add that there was no error in the finding of probable cause since the Secretary of Justice had the discretion to modify, reverse, or alter their own earlier resolution.⁶² Respondent Heirs of Lupogan et al. likewise argues that a preliminary investigation is merely inquisitorial and not a trial on the merits,⁶³ and that petitioner's allegations and defenses of alibi are best addressed at trial.⁶⁴

The issues for this Court's resolution are the following:

⁵⁵ Id. at 1996–1999.

⁵⁶ Id. at 1999–2003.

⁵⁷ Id. at 2007.

⁵⁸ Id. at 2057, 2843. The Memorandum represents the heirs of Atty. Concepcion Brizuela y Jayme, Genalin Mangudadatu y Tiamson, Bai Eden Mangudadatu y Gaguil, Bai Farinah Hassan, Surayda Bernan y Gaguil, Mamotabai Mangudadatu, Wahida Kalim y Ali, Rowena Ante y Mangudadatu, Raida Abdul y Sapalon, Faridah Sabdullah y Gaguil, Pinky Balayman, Norton "Sedick" Edza y Ebus, Razul Daud y Bulilo, Abdillah Ayada, Wilhelm S. Palabrica, Mercy Palabrica, Anthony A. Ridao, Rahima P. Palawan, Meriam Calimbol, Eduardo D. Lechonsito, Cecille Lichonsito, Mac Delbert Areola, Daryll Vincent Delos Reyes, Catalino Oquendo, Jr., and Atty. Cynthia Oquendo-Ayon. The Memorandum was also later adopted by the Heirs of Ronie Perante, Fernando Razon, Romeo Cabillo, John Caniban, Erneste Maravilla, Eleonor Dalmacio, Rubello Bataluna, and Benjie Adolfo.

⁵⁹ The Memorandum represents the heirs of Lindo Lupogan, Daniel Tiamzon, Jose Duhay, Napoleon Salaysay, Santos Gatchalian, Jr., Alejandro Reblando, Joel Parcon, Rey Merisco, Bienvenido Legarta, Mac Delbert Arriola, Victor Nufez, Julito Evardo, and Eduardo and Cecille Lechonsito.

⁶⁰ *Rollo*, pp. 1058–1059.

⁶¹ Id. at 2024–2026.

⁶² Id. at 2026–2027.

⁶³ Id. at 1936–1939.

⁶⁴ *Rollo*, pp. 1940–1942.

first, whether the Secretary of Justice committed grave abuse of discretion in accepting evidence on a supplemental motion for reconsideration without ordering a separate reinvestigation;

second, whether petitioner was denied due process on the allegation that he was not allowed to controvert the additional evidence presented in the supplemental motion for reconsideration; and

third, whether the Secretary of Justice committed grave abuse of discretion when he found probable cause to indict petitioner for multiple murder based on the supplemental motion for reconsideration.

However, before discussing the substantive issues, this Court must first pass upon the procedural issue of whether petitioner presents questions of fact in his Petition for Review on *Certiorari* with this Court.

I

Petitioner's arguments appear to be raising questions of fact, since he questions the probative value of the evidence⁶⁵ leading to the finding of probable cause against him. Respondent Secretary of Justice would be correct in stating that this would not be proper in a petition for review on *certiorari* under Rule 45 of the Rules of Court.⁶⁶

A closer look at the arguments and the issues raised, however, shows that apart from the probative value of the evidence before the Secretary of Justice, the manner of presenting and weighing the evidence was also in question. In other words, petitioner questions both the finding of probable cause and the exercise of the Secretary of Justice's discretion in determining its existence. To thresh out these issues, this Court must first look into the legal questions raised by the parties.

The prosecution of a criminal case starts with the offended party filing a complaint.⁶⁷ The prosecutor, acting on the complaint, conducts a preliminary investigation to determine if there is probable cause to file an information with the court.⁶⁸ Probable cause is defined as a "sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."⁶⁹

⁶⁵ See *Pascual v. Burgos*, 776 Phil. 167, 183 (2016) [Per J. Leonen, Second Division].

⁶⁶ See RULES OF COURT, Rule 45, Section 1.

⁶⁷ See REVISED RULES OF CRIMINAL PROCEDURE, Rule 110, Section 1.

⁶⁸ See REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Sections 1, 2.

⁶⁹ See REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Section 1.

The conduct of the preliminary investigation, as well as any subsequent finding of probable cause, is within the sole discretion of the prosecutor.⁷⁰ As it is a purely executive function, courts are not to interfere absent any grave abuse of discretion.⁷¹

Here, petitioner alleges that the finding of probable cause against him was based on evidence in an allegedly prohibited motion, i.e., the Supplemental Motion for Reconsideration containing the Talusan affidavit, which he was allegedly not given an opportunity to controvert.

Under the 2000 National Prosecution Service Rule on Appeal, second or further motions for reconsideration are prohibited pleadings that shall no longer be entertained:

SECTION 13. Motion for reconsideration. The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

Indeed, reversals of this Court's decisions on second or further motions for reconsideration are disfavored, as all litigation must come to its inevitable end. As explained in *Ortigas and Company Limited Partnership v. Velasco*:⁷²

A second motion for reconsideration is forbidden except for extraordinarily persuasive reasons, and only upon express leave first obtained. The propriety or acceptability of such a second motion for reconsideration is not contingent upon the averment of "new" grounds to assail the judgment, i.e., grounds other than those theretofore presented and rejected. Otherwise, attainment of finality of a judgment might be staved off indefinitely, depending on the party's ingeniousness or cleverness in conceiving and formulating "additional flaws" or "newly discovered errors" therein, or thinking up some injury or prejudice to the rights of the movant for reconsideration. "Piece-meal" impugnation of a judgment by successive motions for reconsideration is anathema, being precluded by the salutary axiom that a party seeking the setting aside of a judgment, act or proceeding must set out in his motion all the grounds therefor, and those not so included are deemed waived and cease to be available for subsequent motions.⁷³ (Citations omitted)

This Court, however, recognizes that it is one of last resort, and must act consistently within the bounds of the rule of law and the furtherance of justice. Thus, in very rare instances, second motions for reconsideration are

⁷⁰ See *De Lima v. Reyes*, 776 Phil. 623, 647 (2016) [Per J. Leonen, Second Division].

⁷¹ See *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 615 (1996) [Per J. Davide, Jr., *En Banc*].

⁷² 324 Phil. 483 (1996) [Per CJ. Narvasa, Third Division].

⁷³ *Id.* at 489-490.

granted “for overriding and extraordinarily persuasive reasons.”⁷⁴

On the other hand, the Department of Justice is not a court of last resort. The rationale for granting a second motion for reconsideration will not apply.⁷⁵ The prohibition in Section 13 of the 2000 National Prosecution Service Rule on Appeal is, thus, ironclad.

Moreover, it is important to understand why second motions for reconsideration are prohibited by the 2000 National Prosecution Service Rule on Appeal. In *Lao v. Co*:⁷⁶

In *Balindong v. CA*, we held that the above provision is a mandatory provision. A second motion for reconsideration is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties.

In this case, the issues presented and the grounds relied upon by petitioners (on the sufficiency of their evidence to establish probable cause for falsification) had been previously raised by them in their first motion for reconsideration and fully passed upon in all three DOJ resolutions. Thus, had they filed a subsequent motion for reconsideration of the third DOJ resolution, it would have been properly classified as a second motion for reconsideration.

We note that the third DOJ resolution explicitly stated that: “The resolution dated August 25, 2003 is set aside and the resolution dated November 14, 2002 dismissing the complaints and the appeal is reinstated.” Following the CA’s ruling, petitioners should have questioned the same. However, in such a case, the subsequent motion for reconsideration would have essentially been a mere reiteration of the same issues and contentions earlier proffered by petitioners for it would have questioned the reinstatement of the first resolution and they would have again insisted on the sufficiency of their evidence to establish probable cause. In fact, petitioners asked the CA to rule on said issue in their petition for certiorari filed therein. Consequently, the CA erred in dismissing the petition for certiorari on the ground that the same was precipitatedly filed because clearly, there was no other plain, speedy and adequate remedy available in the course of law.⁷⁷

What private respondents submitted to the Secretary of Justice, however, was a *Supplemental* Motion for Reconsideration, not a second motion for reconsideration. At the time, the first Motion for Reconsideration⁷⁸ was still pending and unacted upon. There were yet no issues to reiterate. The contents of the Supplemental Motion were such that if given due weight, would reverse the Secretary of Justice’s prior resolution. Clearly, this is not the prohibited pleading contemplated by Section 13 of the

⁷⁴ *Balindong v. Court of Appeals*, 488 Phil. 203, 212 (2004) [Per J. Chico-Nazario, Second Division].

⁷⁵ *See Balindong v. Court of Appeals*, 488 Phil. 203 (2004) [Per J. Chico-Nazario, Second Division].

⁷⁶ 585 Phil. 134 (2008) [Per J. Corona, First Division].

⁷⁷ *Id.* at 138–139.

⁷⁸ *Rollo*, pp. 311–318.

2000 National Prosecution Rule on Appeal.

II

Petitioner laments that he was denied due process, as he had not been given the opportunity to controvert the Supplemental Motion for Reconsideration or to request for a reinvestigation of the evidence presented in the Supplemental Motion.

Indeed, the right to due process in a criminal prosecution includes the right to a preliminary investigation. *Duterte v. Sandiganbayan*⁷⁹ explains:

A preliminary investigation, on the other hand, takes on an adversarial quality and an entirely different procedure comes into play. This must be so because the purpose of a preliminary investigation or a previous inquiry of some kind, before an accused person is placed on trial, is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional in its fundament, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty, is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.⁸⁰ (Citations omitted)

In *Duterte*, this Court found that there was an improper conduct of preliminary investigation, and that the accused's rights were violated even if they were given the opportunity to file a motion for reconsideration. However, in *Duterte*, the investigating officer had determined that their comment to the complaint was sufficient as their countervailing evidence.

Note that in preliminary investigation, if the complaint is unverified or based only on official reports (which is the situation obtaining in the case at bar), the complainant is required to submit affidavits to substantiate the complaint. The investigating officer, thereafter, shall issue an order, to which copies of the complaint-affidavit are attached, requiring the respondent to submit his counter-affidavits. In the preliminary investigation, what the respondent is required to file is a counter-affidavit, not a comment. It is only when the respondent fails to file a counter-affidavit may the investigating officer consider the respondent's comment as the answer to the complaint. Against the foregoing backdrop, there was a palpable non-observance by the Office of the Ombudsman of the fundamental requirements of preliminary

⁷⁹ 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].

⁸⁰ Id. at 576.

investigation.

Apparently, in the case at bar, the investigating officer considered the filing of petitioner's comment as a substantial compliance with the requirements of a preliminary investigation. Initially, Graft Investigator Manriquez directed the members of the Special Audit Team on 9 October 1991 to submit their affidavits relative to SAR No. 91-05. However, on 12 November 1991, before the affidavits were submitted, Manriquez required petitioners to submit their respective comments on the complaint in the civil case and on Special Audit Report (SAR) 91-05. Even when the required affidavits were filed by the audit team on 4 December 1991, petitioners were still not furnished copies thereof.⁸¹

The accused were not given the opportunity to submit their counter-affidavits or other evidence that would substantiate their defense, which was clearly a violation of their right to have the opportunity to be heard.

Here, petitioner was able to file his counter-affidavit and the affidavits of his witnesses, as well as other documentary evidence, to prove his defense of alibi. Even in his subsequent pleadings before the Court of Appeals and this Court, petitioner has submitted the same evidence. In all stages of the prosecution, he has been given the opportunity to prove his defenses. "Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy."⁸²

The absence of a reinvestigation on the Talusan affidavit cannot also be said to be a violation of petitioner's right to preliminary investigation.

The Secretary of Justice exercises control and supervision over all prosecutors. In *Ledesma v. Court of Appeals*.⁸³

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

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

(1) Supervision and Control. Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of

⁸¹ Id. at 576-577.

⁸² *Aguinaldo v. Ventus*, 755 Phil. 536, 551 (2015) [Per J. Peralta, Third Division].

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

acts; review, approve, reverse or modify acts and decisions of subordinate officials or units[.]⁸⁴ (Citations omitted)

The Secretary of Justice may even, *motu proprio*, reverse or modify resolutions of the provincial or city prosecutor or the chief state prosecutor without a pending motion from either party:

Section 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

....

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.⁸⁵

The 2000 National Prosecution Service Rule on Appeal states that reinvestigation is necessary only if the Secretary of Justice “finds it necessary to reinvestigate the case.”⁸⁶ Additionally, the Prosecution Service Act of 2010⁸⁷ gives the Secretary of Justice the “authority to act directly on any matter involving national security or a probable miscarriage of justice within the jurisdiction of the prosecution staff, regional prosecution office, and the provincial prosecutor or the city prosecutor and to review, reverse, revise, modify or affirm on appeal or petition for review as the law or the rules of the Department of Justice (DOJ) may provide, final judgements and orders of the prosecutor general, regional prosecutors, provincial prosecutors, and city prosecutors.”⁸⁸ *Community Rural Bank of Guimba v. Talavera*⁸⁹ succinctly states:

In short, the [S]ecretary of [J]ustice, who has the power of supervision and control over prosecuting officers, is the ultimate authority

⁸⁴ Id. at 228–229.

⁸⁵ REVISED RULES OF CRIMINAL PROCEDURE, Rule 112.

⁸⁶ 2000 NPS Rule on Appeal, Section 11.

⁸⁷ Republic Act No. 10071 (2010).

⁸⁸ Republic Act No. 10071 (2010), Section 4.

⁸⁹ 495 Phil. 30 (2005) [Per J. Panganiban, *En Banc*].

who decides which of the conflicting theories of the complainants and the respondents should be believed.⁹⁰

Petitioner does not have the right, statutory or otherwise, to a reinvestigation. This remains solely within the Secretary of Justice's discretion.

Here, preliminary investigation has already concluded. It was within the Secretary of Justice's discretion to accept the evidence in the Supplemental Motion for Reconsideration and direct a reinvestigation on the evidence presented. The Secretary of Justice thus did not exceed the bounds of their discretion when they directed the filing of the information based on the Talusan affidavit.

III

Petitioner insists that there was no probable cause to charge him with being a participant in the Maguindanao Massacre.

Petitioner is reminded, however, that the determination of probable cause in a preliminary investigation is not done by this Court. This Court's duty is confined only to the issue of whether the determination was done in grave abuse of the prosecution's discretion.⁹¹

Considering that there was no grave abuse of discretion committed by the Secretary of Justice in arriving at the finding of probable cause, jurisdiction of this case has already been transferred to the Regional Trial Court upon the filing of the Information. *Crespo v. Mogul*⁹² states:

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

⁹⁰ Id. at 41-42.

⁹¹ See *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568 (1996) [Per J. Davide, Jr., *En Banc*].

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

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 possibly 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 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.⁹³ (Citations omitted)

Any determination as to the guilt or innocence of petitioner rests with

⁹³ Id. 474-476.

the trial court. That the trial court eventually acquitted petitioner does not nullify the initial finding of probable cause.

At the time of the preliminary investigation, Abdul Talusan y Ogalingan had testified before the National Bureau of Investigation Koronadal City Regional Office that petitioner had been present during the planning meeting held in Datu Andal Ampatuan, Sr.'s house on November 22, 2009:

29. T :Bukod sa mga anak ni Datu Andal Ampatuan, Sr., sino-sino pa ang iyong nadatnan at nakita doon sa loob ng compound ni Datu Andal Ampatuan, Sr.?

S :Nakita ko po doon sila Datu Akmad "Tato" Ampatuan, Vice Governor ng Maguinadanao, Kagui Akmad Bagalian Ampatuan, Municipal Mayor ng Salibo, Maguindanao, Samer Uy, Mayor ng Datu Piang, Maguindanao, Diego Mamalapat, Datu Kanor Ampatuan, Nurie Unas, Alex Tomawis, Mayor ng Barrera, Maguindanao, Ben Karandang, Datu Yakob Lumenda alyas "Jack" ng Rajah Buayan, Maguindanao, Abdul Basit Lumenda alyas "Kagui Teng", Barangay Baytal, Rajah Buayan, Maguindanao, Kagui Bayan Kamendan at si Police Colonel Kamaong sa na taga Cotabato City, ARMM police sir.

....

42. T : Ano ang narinig mo sa kanila?

S : Tungkol sa pulitika, sir.

43. T : Ano naman iyong tungko sa pulitika?

S : Ang sabi po ni Datu Andal Ampatuan, Sr. na aking narinig na sinabi "Umukit si Toto Mangudadatu na ematayan endo sa longono taga pendanin na emtayan. Niya ba e kadtalo ni Datu Andal, Sr." In tagalog translation "Kung dumaan si Toto Mangudadatu ay patayin siya pati ang mga kasama niya patayin din." Ito ang salita ni Datu Andal Ampatuan, Sr.

44. T : Ano naman ang sagot ng kanyang mga anak at mga kasapi at mga kamag-anak doon sa meeting na iyon?

S : "Uway Ama." (In tagalog translation "Opo Ama")⁹⁴

His presence at the planning meeting and his apparent agreement to what was being planned was sufficient for the Secretary of Justice to conclude that it was probable for petitioner to have participated in the Maguindanao Massacre.

Petitioner's arrest indicated that the trial court had judicially determined the existence of probable cause. Any petition questioning the validity of the Secretary of Justice's finding of probable cause would have

⁹⁴ *Rollo*, pp. 325–327.

already been moot.⁹⁵ Respondents likewise point out that petitioner was denied bail by the trial court,⁹⁶ indicating that there existed, at the time of petitioner's arrest, strong evidence of guilt.⁹⁷ In this case, therefore, petitioner's eventual acquittal did not indicate grave abuse of discretion in the prosecution's finding of probable cause.

It is interesting to note that petitioner's acquittal was not based on alleged non-participation in the planning meeting but on the absence of the prosecution to prove an overt act:

Insofar as Datu Akmad "Tato" is concerned, while it may be true that he attended several meetings called for the purpose of discussing how to carry out the plot to kill, the court however, is of the view that this is tantamount to conspiracy. Even assuming that it is, conspiracy alone, without the execution of its purpose, is not a crime punishable by law except in special cases. His mere presence in the meeting will not suffice to declare that he indeed conspired with the other Ampatuans to commit the crimes charged. The fact that he uttered the following at the meeting, thus: "pakinggan natin si Ama. Okay kami lahat na patayin sila" and "mabuti nga sa mga Mangudadatu na mahilig mag ambisyon na patayin sila lahat," does not necessarily mean that he pushed for the commission of the crime which prima facie may suffice to find a strong evidence of guilt. However, his having attended a medical mission for the whole day in collaboration with Smart Network International, Inc. at the Municipal gymnasium near the municipal hall of Mamasapano on November 23, 2009 will show that he did not cling to the agreed plot to kill. There is no clear and convincing evidence that will show that accused had committed an overt act in furtherance of the agreed plan.

In the absence of evidence pointing to the accused as being present at the crime site, the court is convinced that he cannot be made criminally liable under the circumstance even with the utterances he made sans overt acts.⁹⁸

However, a preliminary investigation is not the venue to exhaust the parties' arguments, nor is it the tribunal that determines the guilt and innocence of the accused. It merely determines whether there was a *probability* that the accused committed the crime.⁹⁹ It is for the trial court to determine whether the same evidence may yield a finding of guilt beyond reasonable doubt.

ACCORDINGLY, the Petition is **DISMISSED** due to petitioner's acquittal in Criminal Case Nos. Q-09-162148 to Q-09-162172, Q-09-162216

⁹⁵ See *De Lima v. Reyes*, 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

⁹⁶ *Rollo*, p. 2847.


⁹⁷ REVISED RULES OF CRIMINAL PROCEDURE, Rule 114, Section 7.

⁹⁸ *People v. Datu Andal "Unsay" Ampatuan, Jr.*, Criminal Case Nos. 09-162148-72, Q-09-162216-31, Q-10-162652-66, Q-10-163766, GL-Q-12-178638, December 19, 2019. [Per Judge Jocelyn Solis-Reyes, Branch 221, Regional Trial Court, Quezon City] at 637. This pinpoint citation refers to the copy of this Consolidated Partial Decision uploaded to the Supreme Court website.

⁹⁹ See *People v. Narca*, 341 Phil. 696 (1997) [Per J. Francisco, Third Division].

to Q-09-162231 and Q-10-162652 to Q-10-162666.

SO ORDERED.




MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:



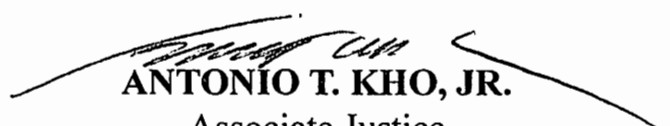
AMY C. LAZARO-JAVIER
Associate Justice



MARIO N. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

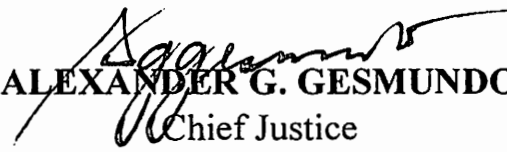
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.


ALEXANDER G. GESMUNDO
Chief Justice