SPECIAL THIRD DIVISION

G.R. No. 208001 *(P/C Supt. Edwin A. Pfleider vs. People of the Philippines)*

Promulgated:

June 19, 2017

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DISSENTING OPINION

VELASCO, JR., *J.*:

I respectfully register my dissent from the position of the majority.

At the onset, the counsel of petitioner P/C Supt. Edwin A. Pfleider (Pfleider) filed a Manifestation dated April 21, 2017 informing the Court that his client passed away on April 15, 2017. As such, any criminal liability which petitioner Pfleider may have by reason of Criminal Case No. 2011-04-268 had already been extinguished. Nevertheless, the Court, as the final adjudicator, must resolve the petition on its merits in order to fulfill its bounden duty to put an end to unsettled judicial controversies, especially so if it is in the pursuit of clearing the name of an innocent man before he is laid to rest.

Nature of the Petition

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision dated October 23, 2012 and Resolution dated June 26, 2013 issued by the Court of Appeals (CA) in CA-G.R. SP No. 06544. The assailed Decision reversed and set aside the Resolution dated September 5, 2011 and Order dated October 26, 2011 of the Regional Trial Court (RTC) of Tacloban City, Branch 9 in Criminal Case No. 2011-04-268 dismissing the case against petitioner Pfleider for lack of probable cause.

The Facts

This criminal case arose from a Complaint-Affidavit for Murder dated October 6, 2010 filed against petitioner Pfleider before the Department of Justice (DOJ) implicating him in the killing of the victim, Manuel S. Granados (Granados). The Complaint alleged that it was petitioner Pfleider who induced accused Ryan O. Bautista (Bautista) to kill Granados by means of price, reward, or promise.

The facts of the case are as follows:

At around 7:00 a.m. of September 15, 2010, Granados was fatally shot by Bautista in front of his home in Tacloban City. After the shooting, Bautista attempted to flee the crime scene but was unsuccessful because his getaway motorcycle failed to start its engine. A neighbor of the victim, Butch Price, came to the rescue and shot and wounded Bautista. Granados was immediately rushed to the Divine Word Hospital for emergency medical treatment but was declared dead by the attending physician. On the other hand, Bautista was brought to the Eastern Visayas Regional Medical Center for treatment of the gunshot wound he sustained from Butch Price.

On the same day, SPO2 Norman Loy Fevidal interviewed Bautista while the latter was still confined and under medication in the hospital. Bautista executed an extrajudicial confession, or his First Affidavit, in a Question and Answer format based on the interview. In his First Affidavit, Bautista implicated petitioner Pfleider as the alleged mastermind of the assassination. He claimed that Pfleider induced him by means of a price, reward or promise of sixty thousand pesos (₱60,000) for the hit.

On September 16, 2010, Rex M. Gillamac (Gillamac) surfaced and gave his statement alleging that he was the one who introduced Bautista to Pfleider. He also claimed that he was with Bautista during a surveillance they conducted on Granados during the second week of July 2010.

On September 17, 2010, a criminal Information for murder was filed against Bautista with the Tacloban City RTC, Branch 9.

On September 18, 2010, Bautista, assisted by Atty. Abet Hidalgo, executed a Second Affidavit, an **Affidavit of Recantation**, wherein he claimed that the persons who previously interviewed him for his first affidavit were already carrying with them a prepared affidavit implicating Pfleider as the mastermind in the shooting of Granados. He alleged that he was pressured and threatened that he will be executed on an electric chair if he did not agree to implicate petitioner. He also alleged that the First Affidavit was not read to him and the contents thereof were not explained to him. Further, he claimed that he did not know if there was a lawyer present during the time of his first interview and he was not given a copy of said affidavit.

On September 28, 2010, a certain Jimmy Atoy (Atoy), a junkshop helper and mechanic for Maning's Enterprises, executed an affidavit and claimed that the motorcycle used during the shooting incident was bought from the store where he was employed. He further alleged that it was petitioner Pfleider who personally handed him the money to be paid to the cashier Catherine Delos Santos (Catherine) for the purchase of the motorcycle.

On October 6, 2010, Evelyn Granados (Evelyn) and Jeric Dane Granados (Jeric), the wife and daughter of the victim, respectively, filed a Complaint-Affidavit with the DOJ against petitioner Pfleider, alleging that the motive for the crime is business rivalry. Private complainants submitted the First Affidavit of Bautista, the Affidavit of Gillamac dated September 16, 2010, and the Affidavit of Atoy dated September 28, 2010, among others.

In his Counter-Affidavit and Rejoinder-Affidavit dated December 15, 2010 and February 2, 2011, respectively, petitioner Pfleider denied any involvement in the crime. He claimed that the arguments of the complainants were mere suppositions and unwarranted presumptions, speculations, and conjectures. He also stated that the statements of the witnesses were mere afterthoughts and obviously scripted and supplied to suit the malicious case against him. He also said that the allegations were all factually and legally unfounded and, thus, bereft and unworthy of any credence and belief.

During the course of the preliminary investigation, private complainants submitted Bautista's Third Affidavit dated January 12, 2011.

Meanwhile, a Resolution dated April 11, 2011 was issued by Asst. State Prosecutor Rex Gingoyon finding that probable cause for murder against petitioner Pfleider exists, and caused the filing of an Information with the Tacloban City Regional Trial Court, raffled to Branch 9.

On April 19, 2011, petitioner Pfleider filed with the RTC an Omnibus Motion to Defer Proceedings and Issuance of Warrant of Arrest. Subsequently, petitioner Pfleider filed on April 28, 2011 a Manifestation and Supplemental Motion to the Omnibus Motion wherein he attached the Affidavit of one Renato Mendoza [1] (Mendoza) dated April 26, 2011. Mendoza, in his Affidavit, denied the allegation of PO3 Felizardo Sacris (Sacris) that he supplied the caliber .45 pistol MKIV, Series 80 with Serial Number 120876, or any other firearm, to Sacris.

Meanwhile, petitioner Pfleider assailed the findings of Asst. State Prosecutor Gingoyon and filed a petition for review with the DOJ.

After conducting a full evaluation of the evidence submitted by both the prosecution and petitioner Pfleider to determine the existence of probable cause for purposes of issuance of warrant of arrest, the RTC, in a Resolution dated September 5, 2011, dismissed the case against petitioner for lack of probable cause. The dispositive portion of said Resolution states:

> **WHEREFORE**, in view of the foregoing, this Court finds no probable cause against accused **P/C SUPT. EDWIN A. PFLEIDER (Ret.)** and accordingly, this Court hereby **DISMISSES** this case.

[1] Annex "K" of the Petition for Review on Certiorari.

SO ORDERED.

The Motion for Reconsideration filed by the prosecution was denied in an Order dated October 26, 2011.

On December 23, 2011, respondent People of the Philippines, through the Office of the Solicitor General (OSG), filed a Special Civil Action for Certiorari under Rule 65 of the Revised Rules of Court with the CA.

In the meantime, the Secretary of Justice issued a Resolution dated May 4, 2012 on the petition for review filed by petitioner Pfleider ruling that since the trial court has dismissed the case, which ruling it concurs with, the petition for review has become moot and academic.

In a Decision[2] dated October 23, 2012, the CA granted the Petition for Certiorari reversing and setting aside the RTC's Resolution dated September 5, 2011 and Order dated October 26, 2011. The dispositive portion of the Decision reads:

> **WHEREFORE**, the petition is **GRANTED**. The September 5, 2011 Resolution and October 26, 2011 Order of the Regional Trial Court, Branch 9, Tacloban City are **SET ASIDE**. Criminal Case No. 2011-04-268 for **MURDER** against Ret. P/C Supt. Edwin A. Pfleider is **REINSTATED**.
>
> **SO ORDERED**.

Petitioner filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration, on which the OSG filed its Comment.

Meanwhile, on January 21, 2013, Asst. State Prosecutor Gingoyon filed with Branch 8 RTC of Tacloban City an Amended Information against Bautista. The Information now reads as follows:

> AMENDED INFORMATION
>
> The undersigned Assistant State Prosecutor acting as the City Prosecutor of Tacloban City per DOJ D.O. No. 472 dated June 10, 2011, accuses **RYAN BAUTISTA y OSTOLANO** of the crime of **MURDER**, committed as follows:
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> That on or about the 15th day of September, 2010 or prior thereto, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and who was offered a price, reward or consideration by another person whose true name, identity and whereabouts are still unknown and mutually helping one another, with intent to kill and with the qualifying circumstance of treachery, evident premeditation and with the use of an

[2] Penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Pampio A. Abarintos and Maria Elisa Sempio Diy.

> LIKELY THAN NOT, A LINK BETWEEN PETITIONER AND RYAN BAUTISTA WITH RESPECT TO THE KILLING OF MANUEL GRANADOS.[3]

In answer to the petition, the OSG filed its Comment dated April 2, 2014 to which petitioner Pfleider filed his Reply on May 14, 2014.

Discussion

I vote to grant the petition.

Petition for Certiorari under Rule 65 is not a remedy or substitute for a lost appeal

The instant petition is similar to *Santos v. Orda*[4] wherein the RTC dismissed the case for murder on the ground that no probable cause existed to indict the accused. In that case, the prosecution filed a motion for reconsideration, which was denied. Aggrieved by the Decision of the RTC, the OSG filed a Petition for Certiorari under Rule 65 with the CA claiming that the RTC committed grave abuse of discretion in finding that no probable cause existed against the accused. The CA thereafter granted said petition. However, this Court reversed and set aside the decision of the CA holding that:

> ...the petition for certiorari filed by respondent under Rule 65 of the Rules of Court is inappropriate. **It bears stressing that the Order of the RTC, granting the motion of the prosecution to withdraw the Information and ordering the case dismissed, is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done by the court. Thus, the proper remedy is appeal.**[5] (emphasis supplied)

Similar to *Orda*, the instant case was dismissed by the RTC for lack of probable cause. The motion for reconsideration of the prosecution was likewise dismissed by the RTC. And just like in *Orda*, the Solicitor General filed a Petition for Certiorari under Rule 65 of the Rules of Court with the CA instead of filing an appeal via Rule 122 of the Revised Rules of Court within 15 days[6] from receipt of the Order dismissing the motion for reconsideration.

The Order denying the prosecution's motion for reconsideration was received by the prosecution on October 26, 2011. Pursuant to Section 6 of Rule 122 and the "fresh period rule,"[7] the prosecution had until November 10, 2011 to perfect their appeal. However, instead of filing the appeal, the

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[3] *Rollo*, pp. 15-16.
[4] G.R. No. 189402, May 6, 2010, 620 SCRA 375.
[5] Id. at 383.
[6] Section 6. When appeal to be taken. An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from.
[7] *Neypes v. Court of Appeals*, G.R. No. 241524, April 14, 2005, 469 SCRA 633, 641.

prosecution opted to file the Petition for Certiorari with the CA on December 23, 2011, or **57 days** after the receipt of the Order.

From the foregoing, the prosecution lost its right to appeal and cannot remedy the lost appeal by filing a petition for certiorari alleging grave abuse of discretion against Judge Rogelio C. Sescon. Remarkably, the prosecution misrepresented in its petition for certiorari that "*there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.*"[8] The prosecution, despite feigning innocence or ignorance, obviously knew that it had the opportunity to use the remedy of appeal under Section 6, Rule 122, yet it failed to use it. An appeal is, in fact, the speediest and most adequate remedy the prosecution should have availed of. However, the prosecution let the 15-day period lapse and opted to use the 60-day period for filing a petition for certiorari, which is hardly the speedy remedy that the prosecution complained of. Consequently, with the expiration of the 15 days provided by the Rules of Court for it to file an appeal, the Resolution of the RTC finding no probable cause against Pfleider became final and terminated the proceedings therein. The prosecution is now precluded from using the extraordinary remedy of certiorari under Rule 65.

The CA cannot invoke the liberalization of the Rules merely based on an allegation of serving the "broader interest of justice" in order to rule on the merits instead of dismissing the petition outright. By allowing the wrong mode of appeal to remedy a lost appeal, the CA is guilty of denying justice to Pfleider. The pronouncement that no probable cause existed cannot be deemed as a grave abuse of discretion since Judge Sescon fully studied and evaluated all the relevant evidence submitted to his sala.

The DOJ, in its Resolution dated May 4, 2012, even agreed to the findings of Judge Sescon that no probable cause existed and that the petition for review was moot and academic. The DOJ held:

> x x x In said case, **Judge Rogelio C. Sescon issued a Resolution dated September 5, 2011, which found no probable cause against respondent P/CSupt. Edwin Pfleider (Ret.)**.
>
> The Court's Resolution, **to which we agree**, renders the petition for review moot and academic. As held by the Supreme Court in Sps. Freddie & Elizabeth Webb, et al. vs. Secretary of Justice, et al., G.R. No. 139120, July 31, 2003, "once a complaint or information is filed in court, however, as in the present case, any disposition of the case- be it dismissal of the case, or conviction or acquittal of the accused- rests on the sound discretion of the court. For although the prosecutor of criminal cases even while the case is already in court, he cannot impose his opinion on the **trial court which is the final arbiter on whether or not to proceed with the case.**" (emphasis supplied)

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[8] *Rollo*, p. 715.

In reversing the RTC and at the same time basing such reversal on a superficial review of the evidence, the CA committed grave abuse of discretion in failing to deny the petition for certiorari.

The Court has authority to resolve the issues and a remand of the case to the trial Court is not warranted because the record is sufficient to render judgment

While this Court, as a general rule, is not a trier of facts, the instant case clearly falls within the exceptions to the general rule.

In the seminal case of *The Insular Assurance Company, Ltd v. Court of Appeals*,[9] this Court had the occasion to expound on the instances that are deemed as exceptions to the generally accepted rule that this Court cannot evaluate issues of facts, namely:

> **x x x x (1) when the findings are grounded entirely on speculation, surmises or conjectures**; (2) when the inference made is manifestly mistaken, absurd or impossible; **(3) when there is grave abuse of discretion**; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) **when the findings are contrary to the trial court**; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and **(11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.**[10] (emphasis supplied)

It is quite evident that the instant petition falls under the above-stated exceptions because the findings of the RTC and the CA are manifestly contradictory. The RTC dismissed the case while the CA found probable cause and ordered the reinstatement of the criminal Information against petitioner Pfleider.

Moreover, the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Looking at the Decision of the CA dated October 23, 2012, the CA obviously failed to examine exhaustively the affidavits of the witnesses, which, if properly examined, would show glaring inconsistencies. In reversing a trial court's decision based on the facts and evidence submitted to the court, the appellate court should review and explain substantially the reason for its reversal by showing the errors the trial court

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[9] G.R. No. 126850, April 28, 2004, 428 SCRA 79.
[10] Id. at 86.

made in rendering its decision. In the herein CA Decision, the pieces of evidence examined were superficially explained and merely enumerated. The CA stated the following:

> First, the testimony of Jimmy Atoy deposing that the get-away vehicle used by Ryan was the same vehicle bought by Pfleider from their store and it was Pfleider's instruction that the receipt and invoice be named after Ryan. Second, PO3 Sacris attested that Pfleider sent him to a gunsmith to get a gun which was later identified as the same gun used to kill the victim Manuel. Third, Rex Gillamac averred that Ryan told him about Pfleider's order to kill Manuel for P50,000.00.[11] x x x

Had the CA carefully considered the evidence on record, it would have arrived at a different conclusion. Studying the evidentiary basis that the CA relied upon, it should have seen that: *first*, Atoy, the mechanic/janitor of Maning's Enterprises, claimed that he allegedly received ₱30,000 from petitioner Pfleider and gave the same to the cashier, Catherine. Thereafter, he stated that petitioner Pfleider allegedly ordered Catherine to place Bautista's name on the receipt. Yet, the prosecution failed to secure the testimony of the cashier, who personally handled the transaction. Obviously, between Atoy and Catherine, the latter's testimony is more credible since she was the one who allegedly personally interacted with petitioner Pfleider. Common sense of a prudent man would of course view the testimony of the mechanic as mere hearsay since the mechanic did not personally interact with a customer and conduct the sale. It is highly doubtful that a customer will hand money to a mechanic instead of paying directly to the cashier. *Second*, PO3 Sacris attested that petitioner Pfleider sent him to a gunsmith, Mendoza, to get the gun used to kill Granados. Again, the prosecution failed to get the testimony of Mendoza to further corroborate the accusation of PO3 Sacris. Ironically, the gunsmith Mendoza, in his Affidavit, denied that PO3 Sacris got the gun from him. The denial of Mendoza disproved the accusation of PO3 Sacris that the gun was obtained from him. *Third*, Gillamac's testimony deserves scant notice since his and Bautista's Affidavits are full of contradictions.

Since the CA heavily relied on the affidavit of both Bautista and Gillamac to reverse the findings of the RTC, a comprehensive review should have been done. Studying the affidavits filed by both Bautista and Gillamac would show that both failed to corroborate the other. Also, Bautista belatedly sought to correct the blatant errors in his First Affidavit by submitting a supplemental/corrective affidavit, already his Third Affidavit, in an attempt to make it appear that his affidavits corroborate Gillamac's affidavit.

Worse, the CA did not even test the admissibility of the prosecution's evidence. For instance, the CA still put probative weight on the Affidavit of PO3 Sacris despite its clear inadmissibility due to the untimely death of PO3

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[11] *Rollo*, p. 124.

Sacris. The CA likewise failed to screen the testimony of Gillamac as being hearsay, and thus inadmissible.

A superficial analysis of the aforementioned affidavits would not serve justice. Clearly, this petition falls also under the exception *"(1) when the findings are grounded entirely on speculation, surmises or conjectures."*

Evidently, this Court can fully appreciate and decide the case based on the evidence submitted because of the aforementioned exceptions. Accordingly, a remand to the RTC is unnecessary because this will entail additional expenses to both parties, as well as the judicial courts. Likewise, justice will not be served due to the delay a remand necessarily entails.

More importantly, remanding this case back to the RTC will result in a scenario where exactly the same pieces of evidence will be reevaluated at the trial court level. In doing so, a dangerous precedent resulting in the destabilization of our justice system may be triggered where the trial court evaluates issues of facts again and again, *ad infinitum*, to the detriment of the parties.

Also, there is no indication that the prosecution was denied their day in court. In fact, the contrary occurred because the prosecution was allowed to submit pieces of evidence on multiple occasions. This led to the RTC's observation stating that the prosecution submitted its evidence piecemeal resorting to multiple clarificatory or supplemental affidavits after realizing that the evidence it had previously submitted was vague, inadequate or conflicting. The submission of multiple clarificatory affidavits served only to weaken the allegations of the prosecution since doubt as to the credibility of the witnesses arose due to the inconsistent facts submitted by them.

For instance, the prosecution submitted the First Affidavit of Bautista at the time the Information was filed with the RTC. Around four months thereafter, and sensing that the petitioner had exploited the vagueness and inconsistencies of Bautista's First Affidavit when juxtaposed with Gillamac's Affidavit, the prosecution submitted Bautista's Third Affidavit in an effort to explain the perceived contradictions.

The prosecution never complained that it was prevented from presenting any evidence that it wished to be considered by the RTC, and, therefore, cannot impute grave abuse of discretion on the part of RTC Judge Sescon for any whimsical, capricious or malicious action, since there is none.

Hence, the record of this case unquestionably contains all evidence submitted by both parties, and there are no more pieces of evidence that any party may further wish to adduce. Remanding the case back to the RTC, which already conducted a full and detailed evaluation of all the evidence, may lead to multiple, unending, or even conflicting determinations of fact.

It is also an established rule for this Court not to remand cases where it is in a position to resolve the dispute based on the records before it.[12] There are several reasons that rationalize this doctrine. In *Golangco v. Court of Appeals*,[13] this Court explained that remanding the case was not proper since, in all probability, it will only **cause further delay** as the decision would again be appealed to this Court. For the expeditious administration of justice, this Court in *Golangco* deemed it proper to resolve the issues presented before it.

In *Board of Commissioners (CID) v. De la Rosa*,[14] it was held that it is a rule for this Court to strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. This Court explained that no useful purpose will be served if a case or the determination of an issue in a case is remanded to the trial court only to have its decision raised again to the CA, and from there back again to this Court.

In *Nicolas v. Desierto*,[15] it was similarly held that remand was not necessary because the Court was in a position to resolve the issue based on the records and evidence before it. More importantly, the Court held that the ends of speedy justice would not be served by such remand.

In *People v. Escober*,[16] this Court deemed it wise to render judgment, rather than to remand the case in order to accord the accused therein their Constitutional right for the speedy disposition of their cases.

Certainly, we can add to the aforementioned explanations and further enrich our jurisprudential principles by affirming that remanding a case is not warranted when doing so can result in multiple, unending, or contradicting determinations of factual issues.

Based on the foregoing, there is no just explanation to remand the instant petition back to the RTC.

The evidence on record submitted by the prosecution clearly failed to support a finding that probable cause exists

It is the considered view that the Court must uphold the detailed analysis made by Judge Sescon that the evidence on record is clearly insufficient to support a finding that probable cause exists.

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[12] *Baylon v. Fact-Finding Intelligence Bureau*, G.R. No. 150870, December 11, 2002, 394 SCRA 21.

[13] G.R. No. 124724, December 22, 1997, 283 SCRA 493, 501.

[14] G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 853, 875-876.

[15] G.R. No. 154668, December 16, 2004, 447 SCRA 154, 164.

[16] G.R. Nos. L-69564 & L-69658, January 29, 1988, 157 SCRA 541.

evidence. In the absence of any other evidence, then there will be nothing for the extrajudicial confession to corroborate.

In the instant case, Bautista's extrajudicial confessions cannot serve to corroborate the allegations of PO3 Sacris and Gillamac. It bears reiterating that PO3 Sacris already died and his death makes it impossible for the petitioner to confront him. On the other hand, Gillamac's allegation regarding the involvement of petitioner is hearsay in nature. Bautista's First Affidavit also cannot serve to corroborate Atoy's statements simply because it never made any reference to Atoy.

Bautista's allegations in his Third Affidavit are too speculative and the manner in which his affidavits were executed was replete with serious irregularities. *First*, Bautista's Third Affidavit, which constitutes a confession, was executed without the assistance of counsel in violation of the Constitutional guarantee against uncounselled confessions. *Second*, Bautista was not informed of his right to have a competent and independent counsel of his own choice in executing his Third Affidavit. *Third*, Bautista's Third Affidavit was executed in English, a language that Bautista does not understand. *Fourth*, Bautista entered a plea of not guilty during his arraignment. As a legal consequence, the prosecution is now required to independently prove all elements of the crime charged and the prosecution can no longer rely on Bautista's extrajudicial confessions. *Fifth*, Bautista executed three different affidavits, a fact that adversely affects his credibility and the voluntariness of his confessions.

Then, the extrajudicial statements of Bautista consist of incredulous accounts. According to Bautista, a certain "Bebe" and "Kokie" invited him to go with them. Bautista agreed to go despite barely knowing "Bebe" and "Kokie," and despite not knowing where the group planned to go. Strangely, the group allegedly ended up meeting with petitioner, where Bautista was introduced as a barber. Months later, petitioner purportedly contacted Bautista and all of a sudden gave the assassination instruction. The narration is highly improbable, contrary to human experience, or even ridiculous.

Also, Bautista claimed that it was Pfleider himself who accompanied him during a surveillance to identify the target victim. This statement of Bautista contradicts Gillamac's version wherein Gillamac claimed that he was the one who accompanied Bautista during the latter's surveillance of the victim. Bautista likewise claimed that it was "Kokie" who introduced him to Pfleider. This is clearly contrary to the allegations of Gillamac claiming that he was the one who introduced Bautista to Pfleider. Notably, nowhere in Bautista's First Affidavit did he even mention Gillamac's name.

Notably, Bautista attempted to salvage the foregoing inconsistencies in his Third Affidavit when he explained that more than one surveillance operation was made. Pfleider allegedly accompanied Bautista in one surveillance operation, while it was Gillamac who went with Bautista in

another surveillance. Bautista also claimed that "Bebe" and Gillamac is actually one and the same person.

The subsequent addition of completely new stories in Bautista's Third Affidavit seriously undermines his spontaneity and truthfulness with respect to the new allegations. It is more than likely that the new stories in Bautista's Third Affidavit were merely fabricated to "fix" fatal drawbacks the prosecution's theory had suffered after the contradictions were exploited. These drawbacks, coupled with the fact that the execution of Bautista's Third Affidavit transgressed multiple Constitutional safeguards, lead to a conclusion that the prosecution's evidence clearly fails to satisfy the required probable cause threshold.

Finally and importantly, we should note that on January 21, 2013, Asst. State Prosecutor Gingoyon filed with Branch 8 of the RTC, Tacloban City, an Amended Information against Bautista which incorporated an accusatory portion that alleges the presence of conspiracy in the murder of Granados. Most interestingly, when Bautista was arraigned on January 25, 2013 pursuant to the newly Amended Information and assisted by his counsel, Atty. Gaspay, Bautista pleaded "Not Guilty." This filing of an Amended Information against Bautista seems to be a desperate attempt to tag petitioner Pfleider as the mastermind behind the murder of Granados. In reviewing the records of this case, the Amended Information took more than two (2) years for the prosecution to amend Bautista's Information solely causing the murder of Granados to conspiring with other persons to commit the crime. Most remarkably, the Amended Information intentionally left Pfleider's name unmentioned, again We quote: "*another person whose true name, identity and whereabouts are still unknown.*"

This Amended Information is a patent violation of Section 2, Rule 110 of the Rules on Criminal Procedure which states: "*The complaint or information shall be in writing, in the name of the People of the Philippines against all persons who appear to be responsible for the offense involved.*" Likewise, Section 6 of the same rule also provides that: "*When an offense is committed by more than one person, all of them shall be included in the complaint or information.*"

Thus, despite the prosecution's tenacious advocacy of implicating Pfleider as the mastermind of the crime, it is quite obvious that the prosecution was never sure about Bautista's alleged co-conspirator. This dislocates their charge against Pfleider of ordering the murder of Granados.

Finally, Bautista's plea of "NOT GUILTY" to the charge found in the Amended Information shows that he was fully aware that the State was charging him for conspiring with another person in the murder of Manuel. By denying his guilt to the charge in the Amended Information, he effectively withdrew and denounced the extrajudicial confession in his First Affidavit wherein he confessed to committing the crime against Granados.

This most recent plea of Bautista only underlines the unreliability and unworthiness of his allegations in the eyes of the law and effectively diminishes his credibility as a witness.

Therefore, the evidence on record submitted by the prosecution clearly failed to support a finding that probable cause exists to charge petitioner for murder.

Accordingly, I vote to GRANT the instant petition.

PRESBITERO J. VELASCO, JR.
Associate Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

AUG 08 2017