Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MARIE CALLO-CLARIDAD, Petitioner,	**G.R. No. 191567**
	Present:
-versus-	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*:
PHILIP RONALD P. ESTEBAN and TEODORA ALYN ESTEBAN, Respondents.	Promulgated: MAR 20 2013

x----------x

DECISION

BERSAMIN, *J.*:

The determination of probable cause to file a criminal complaint or information in court is exclusively within the competence of the Executive Department, through the Secretary of Justice. The courts cannot interfere in such determination, except upon a clear showing that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction.

The Case

Under review is the decision promulgated on November 20, 2009,[1] whereby the Court of Appeals (CA) upheld the resolution dated April 16, 2009 issued by the Secretary of Justice dismissing for lack of probable cause the complaint for murder filed against the respondents.[2]

---

[1] *Rollo*, pp. 80-104; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justice Portia Aliño-Hormachuelos (retired) and Associate Justice Fernanda Lampas-Peralta.

[2] Id. at 281-285.

Antecedents

The petitioner is the mother of the late Cheasare Armani "Chase" Callo Claridad, whose lifeless but bloodied body was discovered in the evening of February 27, 2007 between vehicles parked at the carport of a residential house located at No.10 Cedar Place, Ferndale Homes, Quezon City. Allegedly, Chase had been last seen alive with respondent Philip Ronald P. Esteban (Philip) less than an hour before the discovery of his lifeless body.

Based on the petition, the following are the background facts.

Around 5:30 p.m. of February 27, 2007, Chase returned home from visiting his girlfriend, Ramonna Liza "Monnel" Hernandez. Around 7:00 p.m., Chase's sister Ariane was sitting at the porch of their house when she noticed a white Honda Civic car parked along the street. Recognizing the driver to be Philip, Ariane waved her hand at him. Philip appeared nonchalant and did not acknowledge her gesture. Ariane decided to stay behind and leave with their house helpers, Marivic Guray and Michelle Corpus, only after Chase had left on board the white Honda Civic car.

In the meanwhile, Chase exchanged text messages with his girlfriend Monnel starting at 7:09 p.m. and culminating at 7:31 p.m. Among the messages was: *Ppnta n kunin gulong…yam iniisip k prn n d tyo magksma. sbrang lungkot k ngun* (On the way to get the tires… I still think about us not being together I'm very sad right now)

Security Guard (SG) Rodolph Delos Reyes and SG Henry Solis, who were stationed at the main gate of Ferndale Homes, logged the arrival at 7:26 p.m. on February 27, 2007 of Philip on board a white Honda Civic bearing plate CRD 999 with a male companion in the passenger seat. It was determined later on that the white Honda Civic bearing plate CRD 999 was owned by one Richard Joshua Ulit, who had entrusted the car to Philip who had claimed to have found a buyer of the car. Ulit, Pamela Ann Que, and car shop owner Edbert Ylo later attested that Philip and Chase were friends, and that they were unaware of any rift between the two prior to the incident.

Marivic Rodriguez, a house helper of Shellane Yukoko, the resident of No. 9 Cedar Place, Ferndale Homes, was with her co-employee nanny Jennylyn Buri and the latter's ward, Joei Yukoko, when they heard somebody crying coming from the crime scene: *Help! Help!* This was at about 7:30 p.m. Even so, neither of them bothered to check who had been crying for help. It was noted, however, that No. 10 Cedar Place, which was owned by one Mrs. Howard, was uninhabited at the time. Based on the initial investigation report of the Megaforce Security and Allied Services,

Inc.,[3] the Estebans were illegally parking their cars at Mrs. Howard's carport. The initial investigation report stated that the SGs would regularly remind the Estebans to use their own parking garage, which reminders had resulted in heated discussions and altercations. The SGs kept records of all the illegal parking incidents, and maintained that only the Estebans used the carport of No. 10 Cedar Place.

Around 7:45 p.m., respondent Teodora Alyn Esteban (Teodora) arrived at Ferndale Homes on board a vehicle bearing plate XPN 733, as recorded in the subdivision SG's logbook. At that time, three cars were parked at the carport of No. 10 Cedar place, to wit: a Honda CRV with plate ZAE 135 parked parallel to the Honda Civic with plate CRD 999, and another Honda Civic with plate JTG 333, the car frequently used by Philip, then parked diagonally behind the two cars. Some witnesses alleged that prior to the discovery of the Chase's body, they had noticed a male and female inside the car bearing plate JTG 333 engaged in a discussion.

At around 7:50 p.m., SG Abelardo Sarmiento Jr., while patrolling around the village, noticed that the side of the Honda Civic with plate JTG 333 had red streaks, which prompted him to move towards the parked cars. He inspected the then empty vehicle and noticed that its radio was still turned on. He checked the cars and discovered that the rear and side of the Honda Civic with plate CRD 999 were smeared with blood. He saw on the passenger seat a cellular phone covered with blood. It was then that he found the bloodied and lifeless body of Chase lying between the parallel cars. The body was naked from the waist up, with a crumpled bloodied shirt on the chest, and with only the socks on. SG Sarmiento called for back-up. SG Rene Fabe immediately barricaded the crime scene.

Around 7:55 p.m., SG Solis received a phone call from an unidentified person who reported that a "kid" had met an accident at Cedar Place. SG Solis later identified and confirmed the caller to be "Mr. Esteban Larry" when the latter entered the village gate and inquired whether the "kid" who had met an accident had been attended to. Moreover, when SG Fabe and SG Sarmiento were securing the scene of the crime, they overheard from the radio that somebody had reported about a "kid" who had been involved in an accident at Cedar Place. SG Fabe thereafter searched the village premises but did not find any such accident. When SG Fabe got back, there were already several onlookers at the crime scene.

The Scene-of-the-Crime Operations (SOCO) team arrived. Its members prepared a sketch and took photographs of the crime scene. They recovered and processed the cadaver of Chase, a bloodstained t-shirt, blood

---

[3] Id. at 134-138.

smears, green nylon cord, fingerprints, wristwatch, and a bloodied Nokia N90 mobile phone.

According to the National Bureau of Investigation (NBI) Medico-Legal Report No N-07-163 signed by Dr. Valentin Bernales, Acting Medico-Legal Division Chief, and Dr. Cesar B. Bisquera, Medico-Legal Officer, the victim sustained two stab wounds, to wit: one on the left side of the lower chest wall with a depth of 9 cm., which fractured the 4th rib and pierced the heart, and the other on the middle third of the forearm. The findings corroborated the findings contained in Medico-Legal Report No. 131-07 of Police Chief Insp. Filemon C. Porciuncula Jr.

Resolution of the
Office of the City Prosecutor

The Office of the City Prosecutor (OCP) of Quezon City dismissed the complaint in its resolution dated December 18, 2007.[4]

The OCP observed that there was lack of evidence, motive, and circumstantial evidence sufficient to charge Philip with homicide, much less murder; that the circumstantial evidence could not link Philip to the crime; that several possibilities would discount Philip's presence at the time of the crime, including the possibility that there were more than one suspect in the fatal stabbing of Chase; that Philip was not shown to have any motive to kill Chase; that their common friends attested that the two had no ill-feelings towards each other; that no sufficient evidence existed to charge Teodora with the crime, whether as principal, accomplice, or accessory; and that the allegation that Teodora could have been the female person engaged in a discussion with a male person inside the car with plate JTG 333 was unreliable being mere hearsay.

The petitioner moved for the reconsideration of the dismissal, but the OCP denied the motion on December 15, 2008.[5]

Resolution by the Secretary of Justice

On petition for review,[6] the Secretary of Justice affirmed the dismissal of the complaint on April 16, 2009.[7]

---

4 Id. at 219-225.
5 Id. at 243-244.
6 Id. at 245-280.
7 Id. at 281-285.

The Secretary of Justice stated that the confluence of lack of an eyewitness, lack of motive, insufficient circumstantial evidence, and the doubt as to the proper identification of Philip by the witnesses resulted in the lack of probable cause to charge Philip and Teodora with the crime alleged.

The Secretary of Justice held that the only circumstantial evidence connecting Philip to the crime was the allegation that at between 7:00 to 7:30 o'clock of the evening in question, Chase had boarded the white Honda Civic car driven by Philip; that the witnesses' positive identification of Philip as the driver of the car was doubtful, however, considering that Philip did not alight from the car, the windows of which were tinted; and that the rest of the circumstances were pure suspicions, and did not indicate that Philip had been with Chase at the time of the commission of the crime.

After her motion for reconsideration was denied by the Secretary of Justice on May 21, 2009,[8] the petitioner elevated the matter to the CA by petition for review under Rule 43, *Rules of Court*.

Ruling of the CA

In her petition for review in the CA, the petitioner assigned to the Secretary of Justice the following errors, to wit:

> I. THE HONORABLE SECRETARY OF JUSTICE MANIFESTLY ERRED IN DENYING THE PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION THEREOF FILED BY PETITIONER CONSIDERING THAT PROBABLE CAUSE EXISTS AGAINST RESPONDENTS FOR THE CRIME OF MURDER UNDER ARTICLE 248 OF THE REVISED PENAL CODE.
>
> II. THE HONORABLE SECRETARY OF JUSTICE ERRED IN NOT FINDING THE NUMEROUS PIECES OF CIRCUMSTANTIAL EVIDENCE PRESENTED AGAINST RESPONDENTS TO HOLD THEM LIABLE FOR THE CRIME OF MURDER AS EXTANT IN THE RECORDS OF THE CASE.
>
> III. THE HONORABLE SECRETARY OF JUSTICE ERRED IN NOT FINDING THAT ALL THE ELEMENTS OF THE CRIME OF MURDER ARE PRESENT IN THE INSTANT CASE.[9]

On November 20, 2009, the CA promulgated its assailed decision,[10] dismissing the petition for review.

---

8 Id. at 304-305.
9 Id. at 94.
10 Supra note 1.

The petitioner filed a motion for reconsideration, but the CA denied the motion for its lack of merit.

Hence, this appeal by petition for review on *certiorari*.

The petitioner prays that Philip and Teodora be charged with murder on the strength of the several pieces of circumstantial evidence; that the qualifying aggravating circumstances of evident premeditation and treachery be appreciated in the slaying of her son, given the time, manner, and weapon used in the commission of the crime and the location and degree of the wounds inflicted on the victim.

Issue

Whether the CA committed a reversible error in upholding the decision of the Secretary of Justice finding that there was no probable cause to charge Philip and Teodora with murder for the killing of Chase.

Ruling

We deny the petition for review, and sustain the decision of the CA.

We note, to start with, that the petitioner assailed the resolution of the Secretary of Justice by filing in the CA a petition for review under Rule 43, *Rules of Court*. That was a grave mistake that immediately called for the outright dismissal of the petition. The filing of a petition for review under Rule 43 to review the Secretary of Justice's resolution on the determination of probable cause was an improper remedy.[11] Indeed, the CA had no appellate jurisdiction *vis-à-vis* the Secretary of Justice.

A petition for review under Rule 43 is a mode of appeal to be taken only to review the decisions, resolutions or awards by the quasi-judicial officers, agencies or bodies, particularly those specified in Section 1 of Rule 43.[12] In the matter before us, however, the Secretary of Justice was not an officer performing a quasi-judicial function. In reviewing the findings of the

---

[11] *Levi Strauss (Phils.), Inc. v. Lim*, G.R. No. 162311, December 4, 2008, 573 SCRA 25, 38-39; *Barangay Dasmariñas v. Creative Play Corner School*, G.R. No. 169942, January 24, 2011; 640 SCRA 294,307.

[12] These include the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

OCP of Quezon City on the matter of probable cause, the Secretary of Justice performed an essentially executive function to determine whether the crime alleged against the respondents was committed, and whether there was probable cause to believe that the respondents were guilty thereof.[13]

On the other hand, the courts could intervene in the Secretary of Justice's determination of probable cause only through a special civil action for *certiorari*. That happens when the Secretary of Justice acts in a limited sense like a quasi-judicial officer of the executive department exercising powers akin to those of a court of law.[14] But the requirement for such intervention was still for the petitioner to demonstrate clearly that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction. Unless such a clear demonstration is made, the intervention is disallowed in deference to the doctrine of separation of powers. As the Court has postulated in *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*: [15]

> Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. x x x

Secondly, even an examination of the CA's decision indicates that the CA correctly concluded that the Secretary of Justice did not abuse his discretion in passing upon and affirming the finding of probable cause by the OCP.

A preliminary investigation, according to Section 1, Rule 112 of the *Rules of Court*, is "an inquiry or proceeding to determine whether there is 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." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of

---

13 *Bautista v. Court of Appeals*, G.R. No. 143375, July 6, 2001, 360 SCRA 618, 623.
14 *Spouses Dacudao v. Secretary of Justice*, G.R. No. 188056, January 8, 2013.
15 G.R. No. 177780, January 25, 2012, 664 SCRA 165, 176-177.

the offense.[16] The role and object of preliminary investigation were "to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."[17]

In *Arula vs. Espino*,[18] the Court rendered the three purposes of a preliminary investigation, to wit: (1) to inquire concerning the commission of a crime and the connection of the accused with it, in order that he may be informed of the nature and character of the crime charged against him, and, if there is probable cause for believing him guilty, that the State may take the necessary steps to bring him to trial; (2) to preserve the evidence and keep the witnesses within the control of the State; and (3) to determine the amount of bail, if the offense is bailable. The officer conducting the examination investigates or inquires into facts concerning the commission of a crime with the end in view of determining whether an information may be prepared against the accused.

The determination of the existence of probable cause lies within the discretion of the public prosecutor after conducting a preliminary investigation upon the complaint of an offended party.[19] Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.[20]

A public prosecutor alone determines the sufficiency of evidence that establishes the probable cause justifying the filing of a criminal information against the respondent because the determination of existence of a probable cause is the function of the public prosecutor.[21] Generally, the public prosecutor is afforded a wide latitude of discretion in the conduct of a preliminary investigation. Consequently, it is a sound judicial policy to refrain from interfering in the conduct of preliminary investigations, and to just leave to the Department of Justice the ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on

---

16 *Osorio v. Desierto*, G.R. No. 156652, October 13, 2005, 472 SCRA 559, 574; *Kara-an v. Office of the Ombudsman*, G.R. No. 119990, June 21, 2004, 432 SCRA 457, 467.

17 *Hashim v. Boncan*, 71 Phil. 216 (1941).

18 No. L-28949, June 23, 1969, 28 SCRA 540, 592.

19 *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148.

20 Id. at 148-149.

21 *Glaxosmithkline Philippines Inc. v. Khalid Mehmood Malik*, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 272-273.

the matter of probable cause except in clear cases of grave abuse of discretion.[22] By way of exception, however, judicial review is permitted where the respondent in the preliminary investigation clearly establishes that the public prosecutor committed grave abuse of discretion, that is, when the public prosecutor has exercised his discretion in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross enough as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[23] Moreover, the trial court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[24] Although policy considerations call for the widest latitude of deference to the public prosecutor's findings, the courts should never shirk from exercising their power, when the circumstances warrant, to determine whether the public prosecutor's findings are supported by the facts, and by the law.[25]

Under the circumstances presented, we conclude to be correct the CA's determination that no *prima facie* evidence existed that sufficiently indicated the respondents' involvement in the commission of the crime. It is clear that there was no eyewitness of the actual killing of Chase; or that there was no evidence showing how Chase had been killed, how many persons had killed him, and who had been the perpetrator or perpetrators of his killing. There was also nothing that directly incriminated the respondents in the commission of either homicide or murder.

Admittedly, the petitioner relies solely on circumstantial evidence, which she insists to be enough to warrant the indictment of respondents for murder.

We disagree.

For circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with one another and must constitute an unbroken chain leading to one fair and reasonable conclusion that a crime has been committed and that the respondents are probably guilty thereof. The pieces of evidence must be consistent with the hypothesis that the respondents were probably guilty of the crime and at the same time inconsistent with the hypothesis that they were innocent, and with every

---

[22] *Kapunan Jr. v. Court of Appelas*, G.R. No. 148213-17, and G.R. No. 148243, March 13, 2009, 581 SCRA 42, 55 citing *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777; *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[23] *Metropolitan Bank and Trust Company v. Reynado*, G.R. No. 164538 August 9, 2010, 627 SCRA 88, 101; *Kalalo v. Office of the Ombudsman*, supra note 19, at 149.

[24] *Manebo v. Acosta*, G.R. No. 169554, October 28, 2009, 604 SCRA 618, 627-628, citing *Alawiya v. Datumanong*, G.R. No. 164170, April 16, 2009, 585 SCRA 267, 281.

[25] *Miller v. Perez*, G.R. No. 165412, May 30, 2011, 649 SCRA 158, 173.

rational hypothesis except that of guilt.[26] Circumstantial evidence is sufficient, therefore, if: (*a*) there is more than one circumstance, (*b*) the facts from which the inferences are derived have been proven, and (*c*) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[27]

The records show that the circumstantial evidence linking Philip to the killing of Chase derived from the bare recollections of Ariane (sister of Chase), and of Guray and Corpus (respectively, the househelp and nanny in the household of a resident of the subdivision) about seeing Chase board the white Honda Civic at around 7:00 p.m. of February 27, 2007, and about Philip being the driver of the Honda Civic. But there was nothing else after that, because the circumstances revealed by the other witnesses could not even be regarded as circumstantial evidence against Philip. To be sure, some of the affidavits were unsworn.[28] The statements subscribed and sworn to before the officers of the Philippine National Police (PNP) having the authority to administer oaths upon matters connected with the performance of their official duties undeniably lacked the requisite certifications to the effect that such administering officers had personally examined the affiants, and that such administering officers were satisfied that the affiants had voluntarily executed and understood their affidavits.[29]

The lack of the requisite certifications from the affidavits of most of the other witnesses was in violation of Section 3, Rule 112 of the *Rules of Court*, which pertinently provides thusly:

> Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:
>
> (a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. **The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.**
>
> x x x x

The CA explained that the requirement for the certifications under the aforecited rule was designed to avoid self-serving and unreliable evidence

---

[26] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 252.
[27] Section 4, Rule 133, *Rules of Court*.
[28] *Rollo*, pp. 114-115, and pp. 131-132.
[29] Id. at 116-118, 123-125, and 126-128.

from being considered for purposes of the preliminary investigation, the present rules for which do not require a confrontation between the parties and their witnesses; hence, the certifications were mandatory, to wit:

> In ***Oporto, Jr. vs. Monserate***, it was held that the requirement set forth under Section 3, Rule 112 of the Revised Rules of Criminal Procedure is mandatory. This is so because the rules on preliminary investigation does not require a confrontation between the parties. **Preliminary investigation is ordinarily conducted through submission of affidavits and supporting documents, through submission of affidavits and supporting documents, through the exchange of pleadings. Thus, it can be inferred that the rationale for requiring the affidavits of witnesses to be sworn to before a competent officer so as to ensure that the affidavits supporting the factual allegations in the Complaint have been sworn before a competent officer and that the affiant has signed the same in the former's presence declaring on oath the truth of the statement made considering that this becomes part of the bases in finding probable guilt against the respondent. Well-settled is the rule that persons, such as an employee, whose unsworn declarations in behalf of a party, or the employee's employer in this case, are not admissible in favor of the latter. Further, it has been held that unsworn statements or declarations are self-serving and self-serving declarations are not admissible in evidence as proof of the facts asserted, whether they arose by implication from acts and conduct or were made orally or reduced in writing. The vital objection to the admission to this kind of evidence is its hearsay character.**
>
> In the case at bar, a perusal of the statements/affidavits accompanying the complaint shows that out of the total of 16 statements/affidavits corresponding to the respective witnesses, only nine (9) thereof were sworn to before a competent officer. These were the affidavits of the following: (1) SG Sarmiento; (2) SG Solis; (3) SG Fabe; (4) SG Marivic Rodriguez; (5) Jennylyn Buri; (6) Richard Joshua Sulit; (7) Marites Navarro; (8) Pamela-Ann Que; and (9) Edbert Ylo, which were sworn to or subscribed before a competent officer.
>
> Thus, it is imperative that the circumstantial evidence that the victim was last seen in the company of respondent Philip must be established by competent evidence required by the rules in preliminary investigation. Here, it was allegedly Chase's sister, Ariane, and their two household helpers, Marivic Guray and Michelle Corpus, who saw respondent Philip pick up Chase at around 7:00 o'clock in the evening of February 27, 2007. Yet, such fact from which the inference is derived was not duly proven. The statements of Marivic and Michelle both executed on February 28, 2007 were not sworn to before the proper officer. Neither was the affidavit dated July 3, 2009 of Ariane Claridad duly notarized nor is there any explanation why the same was belatedly executed.
>
> It cannot thus be used to prove the circumstance that it was respondent Philip who drove the white car parked in front of their house at around 7:00 o'clock in the evening of February 27, 2007 and that the factual allegation that the car used bore the Plate no. CRD-999. Further, since their affidavits were not in the nature of a public document, it is incumbent upon the complainant to prove its due execution and

> authenticity before the same is admitted in evidence. It is a well-settled rule that private documents must be proved as to their due execution and authenticity before they may be received in evidence.
>
> Likewise, the circumstance that the victim sent a text message to his girlfriend Monet that he was on his way to get the tires at around 7:09 o'clock in the evening of February 27, 2007 is likewise inadmissible in evidence because Monet's affidavit was not sworn to before a competent officer. There was also no evidence of the alleged text message pursuant to the law on admissibility of electronic evidence. Besides, it cannot be inferred therefrom who the victim was with at that time and where he was going to get the tires.
>
> Neither can the handwritten unsworn statement dated February 28, 2007 of SG Rodolph delos Reyes and handwritten sworn statement dated March 8, 2008 of SG Henry Solis be of any help in claiming that the victim was in the company of respondent Philip when the latter entered the village at around 7:26 o'clock in the evening of February 27, 2007. Suffice it to state that their statements only identified respondent Philip driving the white Honda Civic bearing Plate No. CRD-999. However, both were unsure if they saw respondent Philip with a passenger because it was already dark and the car was tinted.[30]

Also, the CA cited in its decision the further consequences of not complying with the aforequoted rule, to wit:

> It also follows that the succeeding pieces of circumstantial evidence relied upon by complainant are not admissible for either being incompetent or hearsay evidence, to wit:
>
> > (a) that at around 7:45 p.m., respondent Teodora Alyn Esteban, on board a vehicle bearing plate no. XPN-733 entered Ferndale Homes is inadmissible because it is not supported by any sworn affidavit of a witness
> >
> > (b) that at around the same time, two unidentified persons, a male and female were heard talking inside Honda Civic bearing plate no. JTG-333 allegedly belonging to respondent Philip, which was one of the vehicles parked at the carport of #10 Cedar Place, inside Ferndale Homes is inadmissible because it is not supported by any sworn affidavit of a witness;
> >
> > (c) that the Esteban family was temporarily using the carport of #10 Cedar Place as a carpark for their vehicles at that time is inadmissible because it is not supported by any sworn affidavit of a witness;
> >
> > (d) that when the guards went to the house of the Esteban family, the same was unusually dark and dim is inadmissible because it is not supported by any sworn affidavit of a witness;

---

[30] Id. at 98-100.

(e) that while the crime scene was being processed, Mr. Esteban sought assistance from the police and requested that they escort his son, respondent Philip Esteban, to St. Luke's Medical Center, as the latter also allegedly suffered injuries is inadmissible because it is not supported by any sworn affidavit of a witness;

(f) that during the investigation, Philip, Mrs. Teodora Alyn Esteban and their family refused to talk and cooperate with the authorities and that they neither disclosed the extent of Philip's alleged injuries nor disclosed as to how or why he sustained them is inadmissible because it is not supported by any sworn affidavit of a witness; and

(g) Mrs. Edith Flores, speaking for respondents' family, reportedly communicated with the family of the deceased on numerous occasions and offered to pay for the funeral expenses is inadmissible because it is not supported by any sworn affidavit of a witness.

This now leaves this Court with the remaining pieces of circumstantial evidence supported by the sworn statement dated March 6, 2007 of Marivic Rodriguez, handwritten sworn statement dated March 8, 2007 of SG Abelardo Sarmiento, Jr. and handwritten sworn statement dated March 8, 2007 of SG Rene Fabe as follows:

(a) at around 7:30 p.m., Marivic Guray and Jennylyn Buri heard a commotion (loud cries saying "Help! Help!) at No. 10, Cedar Place inside Ferndale Homes;

(b) at around 7:50 p.m., the body of the deceased was discovered lying in a pool of blood in the carport of #10 Cedar Place;

(c) there was blood inside and outside the white Honda Civic bearing plate no. CRD-999;

(d) that at around 7:55 p.m., respondent Philip Esteban's father, Lauro Esteban, who was then outside the village, called the security guard at the entrance gate of the village to report the incident through his mobile phone;

(e) that at around 9:09 p.m., Mr. Esteban entered the village and admitted that he was the one who called for assistance regarding an incident that transpired at Cedar Place; and

(f) as per Autopsy Report, the cause of Chase's death was a stab wound in the chest and that the said wound was 9 centimeters deep, or around 3.6 inches and cut the descending aorta of his heart.

The above pieces of circumstantial evidence, though duly supported by sworn statements of witnesses, when taken as a whole, do not, however, lead to a finding of probable cause that respondents committed the crime charged.

> The factual allegations of the complaint merely show that at around 7:30 o'clock in the evening of February 27, 2007, Marivic Rodriguez heard a male voice, coming from the front of their employer's house, shouting "*Help! Help!*"; that at around 7:50 p.m., the body of the deceased was discovered lying in a pool of blood in the carport of #10 Cedar Place; that there was blood inside and outside the white Honda Civic bearing plate no. CRD-999; and, that as per Autopsy Report, the cause of Chase's death was a stab wound in the chest and that the said wound was 9 centimeters deep, or around 3.6 inches and cut the descending aorta of his heart. However, all of these do not prove the presence of respondents at the scene of the crime nor their participation therein.
>
> We likewise agree with the DOJ Secretary that there was no motive on the part of the respondents to kill the victim. This was supported by the sworn statement dated March 1, 2007 of Richard Joshua Ulit; the sworn statement dated March 10, 2007 of Pamela-Ann Que; and, the sworn statement dated March 10, 2007 of Egbert Ylo, who all knew the victim and respondent Philip and claimed that the two were good friends and that they were not aware of any misunderstanding that occurred between the concerned parties. Jurisprudence is replete that motive becomes of vital importance when there is doubt as to the identity of the perpetrator.
>
> In *Preferred Home Specialties, Inc., et al. vs. Court of Appeals, et al.,* the Supreme Court held that while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty, the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[31]

It is clear from the foregoing disquisitions of the CA that the Secretary of Justice reasonably reached the conclusion that the dismissal by the OCP of Quezon City of the complaint for murder had been based on the lack of competent evidence to support a finding of probable cause against the respondents. Accordingly, such finding of probable cause by the Executive Department, through the Secretary of Justice, could not be undone by the CA, in the absence of a clear showing that the Secretary of Justice had gravely abused his discretion. *Grave abuse of discretion* means that the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[32] That showing was not made herein.

---

31 Id. at 100-103.

32 *Metropolitan Bank & Trust Co. (Metrobank) v. Tobias III*, supra note 15.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*, and **AFFIRMS** the decision of the Court of Appeals promulgated on November 20, 2009.

The petitioner shall pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice