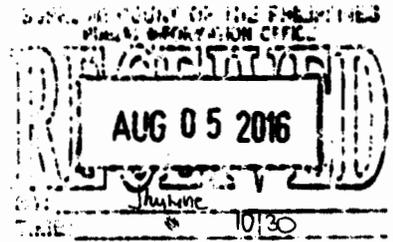




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

**WILSON FENIX, REZ
 CORTEZ and ANGELITO
 SANTIAGO,**

Petitioners,

- versus -

**THE HONORABLE COURT OF
 APPEALS and the PEOPLE OF
 THE PHILIPPINES,**

Respondents.

G.R. No. 189878

Present:

SERENO, *CJ*, Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ*.

Promulgated:

JUL 11 2016

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DECISION

SERENO, *CJ*:

In this petition for review on certiorari under Rule 45 of the Rules of Court, We uphold the power of judges to dismiss a criminal case when the evidence on record clearly fails to establish probable cause for the issuance of a warrant of arrest.

The petition challenges the Court of Appeals (CA) Decision¹ and Resolution² in CA-G.R. SP No. 98187. The assailed CA Decision annulled the Orders³ issued by the Regional Trial Court of Makati City, Branch 139 (RTC), which dismissed Criminal Case No. 05-1768 for lack of probable cause for the issuance of warrants of arrest against petitioners who had been charged with serious illegal detention. The assailed CA Resolution denied petitioners' motion for reconsideration.

¹ Dated 20 April 2009; *rollo*, pp. 33-54. The Decision issued by the CA Third Division was penned by Associate Justice Normandie B. Pizarro, with Associate Justices Martin S. Villarama, Jr. (retired Member of this Court) and Jose C. Reyes, Jr. concurring.

² Dated 13 October 2009; *Id.* at 55-56.

³ Dated 17 April 2006 and 19 December 2006; *CA rollo*, pp. 65-73, 76-89. The Orders were penned by Benjamin T. Pozon, Presiding Judge, RTC of Makati, Branch 139.

FACTS

Complaint

In a Complaint Affidavit dated 15 June 2005, Technical Sergeant Vidal D. Doble, Jr. (Doble), a member of the Intelligence Service of the Armed Forces of the Philippines (ISAFP), charged petitioners, together with former Deputy Director of the National Bureau of Investigation (NBI) Samuel Ong (Ong), with serious illegal detention committed on 10-13 June 2005.⁴

According to Doble, on the morning of 10 June 2005, petitioner Angelito Santiago (Santiago) brought him to the San Carlos Seminary, Guadalupe, Makati City, where they met petitioner Rez Cortez (Cortez) and Bishop Teodoro C. Bacani, Jr. (Bishop Bacani). While there, Doble heard Ong over the radio making a press statement about the existence of an audio tape of a conversation between then President Gloria Macapagal-Arroyo and a Commission on Elections (COMELEC) commissioner regarding the alleged rigging of the 2004 presidential elections.⁵

On the afternoon of the same day, Ong arrived at the seminary and told Doble that the latter would be presented to the media as the source of the audio tape. From there, Ong and his men proceeded to transfer him from one room to another and closely monitored and guarded his movements. When he approached Santiago and said "*PARE, AYOKO NA, SUKO NA KO,*"⁶ the latter told him to stay put and not go out of the room.

On the morning of 13 June 2005, Doble informed a group of priests who had gone to his room that he was being held against his will. The priests brought him to another room in another building away from Ong and the latter's men. At about 2:30 in the afternoon, Doble was fetched by Bishop Socrates Villegas and turned over to the custody of ISAFP in Camp Aguinaldo, Quezon City.

Doble's Complaint Affidavit was referred to the Chief State Prosecutor, Department of Justice (DOJ), for appropriate legal action.⁷ Also attached to the referral were the affidavits of Doble's witnesses, namely: Arlene Sernal-Doble, wife of Doble;⁸ Reynaldo D. Doble, brother of Doble;⁹ and Marietta C. Santos (Santos), companion of Doble during his alleged illegal detention.¹⁰

⁴ CA rollo, pp. 97-99.

⁵ Id. at 98, 100.

⁶ Id. at 98.

⁷ Id. at 97.

⁸ Id. at 100-103.

⁹ Id. at 106-109, 104-105.

¹⁰ Id. at 110-113, 114-115.

The DOJ constituted an Investigating Panel of Prosecutors¹¹ (panel), which sent subpoenas¹² for the submission of counter-affidavits.

Counter-allegations

Cortez denied the allegations in his counter-affidavit.¹³ He averred that he had stayed at the San Carlos Seminary from noon of 10 June 2005 to the afternoon of the following day to provide moral support for Ong. During his stay there, Cortez supposedly met Doble and Santos only once in the presence of Bishop Bacani.

Ong also submitted his counter-affidavit.¹⁴ According to him, sometime in March 2005, Santiago gave him an audio tape that came from the latter's friend, Doble. Ong was told that the audio tape was a product of the wiretap of calls made to COMELEC Commissioner Virgilio Garcillano, and that several of those calls had been made by President Gloria Macapagal-Arroyo. Before taking steps to make the audio tape public, Ong looked for someone who could arrange for sanctuary for him and Doble. Ong was introduced to Cortez, who made arrangements for them to be accommodated at the San Carlos Seminary on 10 June 2005.

Ong denied the allegation that he had armed men guarding Doble during their three-day stay in the seminary. In fact, he and Santiago were both unarmed, while Doble had his .45-caliber pistol. All of them were free to roam around the seminary. Around noon of 13 June 2005, Ong was informed that Bishop Socrates Villegas fetched Doble upon the request of a woman claiming to be Doble's wife, as well as of their two children. Ong was later brought out of the seminary by Bishop Bacani and other bishops, and taken to a safehouse in the south.

In his counter-affidavit,¹⁵ Santiago essentially corroborated the statements of Ong. Annexed to the counter-affidavits of Ong and Santiago was an Affidavit dated 23 July 2005 executed by Santos,¹⁶ as well as an Affidavit dated 10 August 2005 executed by Bishop Bacani.¹⁷

In her affidavit, Santos recanted all her previous affidavits in support of Doble's complaint. According to her, she was only made to sign the affidavits at the ISAFP office. She made clear that she and Doble had voluntarily sought sanctuary in San Carlos Seminary on 10 June 2005, and that at no point were their movements restricted or closely monitored. They were only transferred from room to room as a safety measure after an ISAFP agent had been seen around the premises.

¹¹ Composed of 1st Assistant Provincial Prosecutor Jaime L. Umpa as chairperson and Special Prosecutors Juan Pedro C. Navera and Irwin E. Maraya as members. (Id. at 306, n. 6.)

¹² CA *rollo*, pp. 130-135.

¹³ Id. at 142-144.

¹⁴ Id. at 147-153.

¹⁵ Id. at 156-160.

¹⁶ Id. at 116-120.

¹⁷ Id. at 301-302.

In his affidavit, Bishop Bacani narrated that he had agreed to give sanctuary to Ong and the latter's group at *Bahay Pari*¹⁸ on 10 June 2005. The other persons in the group were Doble, and Santos whom he assumed was Doble's wife. At no time did the two intimate to Bishop Bacani that they were being detained against their will. Rather, they feared that government forces would find them. Bishop Bacani also stated that no armed guards accompanied Doble and Santos in their room during their stay at *Bahay Pari*.

Resolution of the Panel

In a Resolution dated 9 September 2005,¹⁹ the panel found probable cause to charge petitioners and Ong with serious illegal detention as defined and penalized under Article 267²⁰ of the Revised Penal Code. It ruled that the evidence on hand sufficiently established the fact that the offense had indeed been committed against Doble, who was a public officer detained for more than three days.

The panel did not give any serious consideration to the counter-affidavits, with annexes, executed by Ong and Santiago. Allegedly, they had failed, despite notice, to appear and affirm those counter-affidavits before the panel. The panel was supposedly deprived of the opportunity to ask clarificatory questions to test the credibility of Ong and Santiago. On the other hand, it took note of the admission of Cortez that he had gone to the seminary to give moral support to Ong, an act that allegedly made him a conspirator in the commission of the crime.

PROCEEDINGS BEFORE THE RTC

Accordingly, an Information²¹ for the crime of serious illegal detention was filed before the RTC on 9 September 2005 and docketed as Criminal Case No. 05-1768. Attached to the Information filed before the

¹⁸ Located inside the San Carlos Formation Complex, where the San Carlos Seminary is also situated. (Affidavit dated 10 August 2005 executed by Bishop Bacani, CA *rollo*, pp. 301-302.)

¹⁹ CA *rollo*, pp. 161-168.

²⁰ Art. 267. *Kidnapping and serious illegal detention*. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer;

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

²¹ CA *rollo*, pp. 169-170.

court were the affidavit and supplemental affidavit of Doble and the affidavit of Arlene Sernal-Doble.²²

Petitioners and Ong filed a petition for review of the panel's Resolution before the DOJ,²³ but then DOJ Secretary Raul M. Gonzalez denied it in the Resolution dated 13 January 2006.²⁴ Aggrieved, petitioners and Ong filed a motion to dismiss before the RTC urging the court to personally evaluate the Resolution of the panel and all pieces of evidence, especially the affidavit of Bishop Bacani, to determine the existence of probable cause for the issuance of warrants of arrest.²⁵

After an exchange of pleadings, the RTC directed the panel to submit all the documents that were mentioned in the latter's Resolution dated 9 September 2005, but were not attached to the Information filed before the court.²⁶ Specifically, the court directed the submission of the sworn statements of Santos and Reynaldo and the counter-affidavits with annexes executed by Ong, Santiago and Cortez.²⁷ The panel submitted its compliance on 27 September 2005.²⁸

In the Order dated 17 April 2006,²⁹ the RTC dismissed Criminal Case No. 05-1768 for lack of probable cause for the issuance of warrants of arrest against petitioners and Ong. It saw no justifiable reason why the panel did not give serious consideration to the counter-affidavits of Ong and Santiago. It also recognized the importance of the recantation of Santos. It held that, other than Doble, Santos was the one who truly knew about the incident, as she was with him the whole time.

According to the RTC, recantations are indeed looked upon with disfavor because they can be easily procured through intimidation, threat or promise of reward. There was, however, no showing that the recantation of Santos was attended by any of these vices of consent. At any rate, the court considered it a responsibility to go over all pieces of evidence before the issuance of warrants of arrest, considering the "political undertones" of the case.³⁰ It also found no reason to ignore the affidavit of Bishop Bacani. It regarded him as a disinterested witness who had personal knowledge of the circumstances surrounding the alleged illegal detention, for he was the one who gave sanctuary to Doble and Santos.

The court noted that there was no evidence or allegation whatsoever regarding the involvement of Fenix in the alleged detention.

²² Id. at 68-69.

²³ Id. at 177.

²⁴ Id. at 179-180.

²⁵ Id. at 181-191.

²⁶ Id. at 69.

²⁷ Id.

²⁸ Id. at 69-70.

²⁹ Id. at 65-73.

³⁰ Id. at 72.



The panel filed a Motion for Reconsideration on 2 May 2006.³¹ The following day, it also filed a motion calling for the voluntary inhibition of Presiding Judge Benjamin T. Pozon allegedly due to bias and prejudice as shown by the arbitrary dismissal of the case.³² Finding no just and valid ground therefor, the court denied the motion for inhibition in an Order dated 18 December 2006.³³

The RTC issued another Order dated 19 December 2006³⁴ denying the motion for reconsideration. It upheld its independent authority to conduct its own evaluation of the evidence for the purpose of determining the existence of probable cause for the issuance of warrants of arrest and the dismissal of the case for failure to establish probable cause.

PROCEEDINGS BEFORE THE CA

The OSG filed a petition for certiorari³⁵ before the CA within the 20-day extension previously prayed for.³⁶ Petitioners and Ong moved for the dismissal of the petition for late filing,³⁷ invoking Section 4,³⁸ Rule 65 of the Rules of Court. According to this provision, no extension of time to file a petition shall be granted except for compelling reasons, and in no case exceeding 15 days. The CA admitted³⁹ the petition and denied the motion to dismiss, citing the interest of substantial justice.⁴⁰

On 20 April 2009, the CA issued the assailed Decision⁴¹ ruling that the RTC committed grave abuse of discretion in dismissing Criminal Case No. 05-1768. The appellate court annulled the RTC Orders dated 17 April 2006 and 19 December 2006 and reinstated the Information for serious illegal detention. Nevertheless, the CA sustained the RTC Order dated 18 December 2006 denying the motion for inhibition.

³¹ Id. at 199-206.

³² Id. at 90-96.

³³ Id. at 74-75.

³⁴ Id. at 76-89.

³⁵ Id. at 31-63.

³⁶ Id. at 2-4.

³⁷ Id. at 215-220, 222-228.

³⁸ Before Section 4, Rule 65 of the Rules of Court was amended by A.M. No. 07-7-12-SC dated 4 December 2007, the provision in A.M. No. 00-2-03-SC (2000) read:

Sec. 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

³⁹ CA *rollo*, p. 214.

⁴⁰ Id. at 240-241, 256-257.

⁴¹ Id. at 305-326.

The CA ruled that while a judge is required to personally determine the existence of probable cause for the issuance of a warrant of arrest, this determination must not extend to the issue of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial. In this case, the CA found that the RTC had delved into the evaluation of the evidence, which should have been held in abeyance until after a full-blown trial on the merits.

The appellate court also stressed that the late filing of the OSG's petition had to be disregarded to correct a patent injustice committed against the People through the precipitate dismissal of Criminal Case No. 05-1768.

Petitioners and Ong filed a motion for reconsideration,⁴² but it was denied in the challenged Resolution dated 13 October 2009.⁴³ Meanwhile, Ong passed away on 22 May 2009.⁴⁴

PROCEEDINGS BEFORE THE COURT

Petitioners come before us raising various issues for our consideration. While the petition was originally denied in the Court Resolution dated 15 February 2010,⁴⁵ it was reinstated on 18 August 2010 pursuant to the grant of the motion for reconsideration filed by petitioners.⁴⁶

Upon order of the Court, the OSG filed a Manifestation in Lieu of Comment⁴⁷ dated 24 November 2010. The OSG abandoned the legal theory it had previously espoused and prayed that the petition be given due course in view of its merit. According to the OSG, in dismissing Criminal Case No. 05-1768, the RTC dutifully acted within the parameters of its authority under Section 6(a),⁴⁸ Rule 112 of the Rules of Court. The RTC did not merely rely on the findings and recommendations of the panel, but took into consideration certain supervening events such as the recantation of Santos, the panel's refusal to consider the counter-affidavits of Ong and Santiago, and the affidavit of Bishop Bacani. From the point of view of the OSG, this act was called for pursuant to the court's mandate and could not be regarded as an unlawful intrusion into the executive functions and prerogatives of the

⁴² Id. at 333-349.

⁴³ Id. at 361-362.

⁴⁴ Mark Merueñas, "Garci tape whistleblower Samuel Ong passes away" <<http://www.gmanetwork.com/news/story/162468/news/nation/garci-tape-whistleblower-samuel-ong-passes-away>> (Last accessed on 15 April 2016).

⁴⁵ *Rollo*, pp. 58-59.

⁴⁶ Id. at 199.

⁴⁷ Id. at 221-248.

⁴⁸ Section 6. *When Warrant of Arrest May Issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.



panel. Thus, it opined that the RTC had committed no grave abuse of discretion.

Despite the orders⁴⁹ from this Court, the DOJ's comment to the petition was not filed and, hence, was deemed waived. The petition was given due course in the Resolution dated 13 February 2013.⁵⁰

ISSUE

The instant petition seeks a review of the Decision and the Resolution issued by the CA under its certiorari jurisdiction.⁵¹ In this light, the case shall be decided by resolving the single issue of whether the appellate court erred in finding that the RTC had committed grave abuse of discretion in dismissing Criminal Case No. 15-1768.

OUR RULING

We grant the petition.

The power of the judge to determine probable cause for the issuance of a warrant of arrest is enshrined in Section 2, Article III of the Constitution:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

That this power is provided under no less than the Bill of Rights and the same section enunciating the inviolable right of persons to be secure in their persons only shows that the power is strictly circumscribed. It implies that a warrant of arrest shall issue only upon a judge's personal determination of the evidence against the accused. Thus, when Informations are filed before the courts and the judges are called upon to determine the existence of probable cause for the issuance of a warrant of arrest, what should be foremost in their minds is not anxiety over stepping on executive toes, but their constitutional mandate to order the detention of a person rightfully indicted or to shield a person from the ordeal of facing a criminal charge not committed by the latter.

Further supporting the proposition that judges only have to concern themselves with the accused and the evidence against the latter in the

⁴⁹ *Rollo*, pp. 251-252, 254.

⁵⁰ *Id.* at 268-269.

⁵¹ See *Montoya v. Transmed Manila Corp.*, 613 Phil. 696 (2009).

issuance of warrants of arrest is Section 6(a), Rule 112 of the Rules of Court, which provides:

Section 6. *When Warrant of Arrest May Issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Indeed, under the above-cited provision, judges may very well (1) dismiss the case if the evidence on record has clearly failed to establish probable cause; (2) issue a warrant of arrest upon a finding of probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.⁵² When judges dismiss a case or require the prosecutor to present additional evidence, they do so not in derogation of the prosecutor's authority to determine the existence of probable cause.

First, judges have no capacity to review the prosecutor's determination of probable cause.⁵³ That falls under the office of the DOJ Secretary. Second, once a complaint or an Information has been filed, the disposition of the case is addressed to the sound discretion of the court, subject only to the qualification that its action must not impair the substantial rights of the accused or the right of the People to due process of law.⁵⁴ Third, and most important, the judge's determination of probable cause has a different objective than that of the prosecutor. The judge's finding is based on a determination of the existence of facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested.⁵⁵ The prosecutor, on the other hand, determines probable cause by ascertaining the existence of facts sufficient to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof.⁵⁶

To be sure, in the determination of probable cause for the issuance of a warrant of arrest, the judge is not compelled to follow the prosecutor's certification of the existence of probable cause. As we stated in *People v.*

⁵² *People v. Hon. Dela Torre-Yadao*, G.R. No. 162144-54, 13 November 2012, 685 SCRA 264.

⁵³ *Mendoza v. People*, G.R. No. 197293, 21 April 2014, 722 SCRA 647.

⁵⁴ *Crespo v. Mogul*, 235 Phil. 465 (1987).

⁵⁵ *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192.

⁵⁶ *Agdeppa v. Ombudsman*, G.R. No. 146376, 23 April 2014, 723 SCRA 293.

Inting,⁵⁷ “[i]t is the report, the affidavits, the transcripts of stenographic notes (if any), and all other supporting documents behind the [p]rosecutor’s certification which are material in assisting the [j]udge to make his determination.”⁵⁸

In this case, it bears stressing that the RTC never considered any evidence other than that which the panel had already passed upon. The only difference was that unlike the RTC, the panel did not give any serious consideration to the counter-affidavits of Ong and Santiago, the recantation of Santos or the affidavit of Bishop Bacani. That the trial court did so spelled the difference between the divergent findings.

As aptly pointed out by the RTC, there was no justification for the rejection of the counter-affidavits upon the failure to subscribe and swear to them before the panel. Under Section 3(a) and (c),⁵⁹ Rule 112 of the Rules of Court, counter-affidavits may be subscribed and sworn to before any prosecutor or government official authorized to administer oaths or, in their absence or unavailability, before any notary public. Notably, the counter-affidavits of Ong and Santiago, the recantation of Santos, and the affidavit of Bishop Bacani were all subscribed and sworn to before government prosecutors.⁶⁰

Also, the failure of Ong and Santiago to appear before the panel did not justify the exclusion of their duly submitted counter-affidavits and annexes. Section 3(e), Rule 112 of the Rules of Court provides:

Section 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

x x x x

(e) **The investigating officer may set a hearing if there are facts and issues to be clarified** from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They

⁵⁷ 265 Phil. 817 (1990).

⁵⁸ *Id.* at 821.

⁵⁹ 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 whom 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

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. **The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section**, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit. (Emphases supplied)

⁶⁰ The counter-affidavits of Ong and petitioner Santiago were subscribed and sworn to before Quezon City Assistant City Prosecutor Edgardo T. Paragua; the recantation of Santos before Assistant Provincial Prosecutor Liam Omar Basa; and the affidavit of Bishop Bacani before Makati City Assistant City Prosecutor Lody Tancioco (*Rollo*, p. 19.).

may, however, submit to the investigating officer questions which may be asked to the party or witness concerned. (Emphasis supplied)

Under the provision, the conduct of a clarificatory hearing is not indispensable; rather, it is optional on the part of the investigating prosecutor as evidenced by the use of the term “may.”⁶¹ That hearing fulfills only the purpose of aiding the investigating prosecutor in determining the existence of probable cause for the filing of a criminal complaint before the courts. The clarificatory hearing does not accord validity to the preliminary investigation by the prosecutor, nor does its absence render the proceedings void. Necessarily, the failure of Ong and Santiago to appear at the scheduled clarificatory hearing might have caused some slight inconvenience to the investigating prosecutor, but it did not result in the exclusion of the affidavits or counter-affidavits already submitted by the parties. In fact, under the rules, an investigating prosecutor may resolve a complaint based only on the evidence presented by the complainant if the respondent cannot be subpoenaed or, if subpoenaed, does not submit a counter-affidavit within the prescribed period.⁶²

The panel’s act of resolving the complaint against petitioners and Ong primarily on the basis of Doble’s evidence, and in spite of the timely submission of the counter-affidavits, was clearly committed with grave abuse of discretion. The panel’s Resolution is not before us, but it is nevertheless worthwhile to state that had the RTC adopted the conclusion *in toto*, the latter would have been party to the grave abuse of discretion, thereby justifying a grant of the certiorari petition before the CA.

We have stressed that the court’s dismissal of a case for lack of probable cause for the issuance of a warrant of arrest must be done when the evidence on record plainly fails to establish probable cause; that is, when the records readily show uncontroverted and, thus, established facts that unmistakably negate the existence of the elements of the crime charged.⁶³

The elements of the crime of serious illegal detention are the following: (1) the offender is a private individual; (2) the individual kidnaps or detains another or in any manner deprives the latter of liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) any serious physical injury is inflicted upon the person kidnapped or detained, or threats to kill that person are made; or (d) the person kidnapped or detained is a minor, a female, or a public officer.⁶⁴

⁶¹ *De Ocampo v. Secretary of Justice*, 515 Phil. 702 (2006).

⁶² Rules of Court, Rule 112, Section 3(d).

⁶³ *De los Santos-Dio v. CA*, G.R. Nos. 178947 & 179079, 26 June 2013, 699 SCRA 614.

⁶⁴ *People v. Siongco*, 637 Phil. 488 (2010).



In *People v. Soberano*,⁶⁵ We ruled that the act of holding a person for an illegal purpose necessarily implies an unlawful physical or mental restraint against the person's will, coupled with a willful intent to so confine the victim. The culprit must have taken the victim away against the latter's will, as lack of consent is a fundamental element of the offense, and the involuntariness of the seizure and detention is the very essence of the crime.⁶⁶ Given that principle, there is no illegal detention where the supposed victim consents to the confinement.⁶⁷

In this case, the following disinterested narration of Bishop Bacani clearly shows that Doble and Santos were not seized and detained against their will on 10-13 June 2005:

1. On June 10, 2005, [Cortez] requested me to give sanctuary to [Ong] and another person after a projected press conference to be held somewhere. Considering the importance for the national interest of what [Ong] was to reveal, I favorably considered the matter. After consulting with the director of Bahay Pari, and getting his consent, I agreed to do so.
2. Later in the afternoon of that same day, I learned to my surprise that [Ong] was being interviewed in a van outside Bahay Pari by Mr. Arnold Clavio.
3. In the meantime I noticed a man and a woman standing in the lobby of Bahay Pari. After the departure of the van where [Ong] was being interviewed, I learned that the man was the other person I was requested to give sanctuary to. Presuming that the woman was his wife, since they seemed familiar with each other, I had them brought to a room in Bahay Pari. In no way did they show any sign that they were coerced to come, especially since [Ong] had gone away.
4. Much later, [Ong] arrived and I also had him brought to a room of his own far away from the room of the couple, whom I was to know later [as Doble] and [Santos].
5. At dusk, I was disturbed to learn that an unknown man, not a resident of Bahay Pari was seen inside our premises. We tried to get hold of the man but he escaped. Fearing harm for the couple, I rushed to their room and was relieved to find that they were safe. [Doble] said he recognized the man, but it seemed [the man] did not recognize him in the dark.
6. [Doble] and his companion mostly [kept] to their room and there did not seem to be any direct contact between him and [Ong] or [Cortez], the latter two having kept to their side of the house, while [Doble] and his companion kept to their room. Once in a while I would check on [Doble] and [Santos] to find out if they were alright. At no time did they ever intimate to me in any way that they were being detained against their will. [Santos] even ventured at least once to come and get food from our refectory. They feared rather that government forces might get them, and so they even transferred to another room where

⁶⁵ 346 Phil. 449 (1997).

⁶⁶ *Id.*

⁶⁷ *Id.*



they would not be exposed (I was told) to sniper fire or observation from the neighboring buildings.

7. On June 11, I bade goodbye to [Doble] and told him that I would be going somewhere to officiate a wedding, and that I would return at around noon the following day. Again, he showed no sign that he wanted to leave Bahay Pari. That would have been a perfect opportunity for him to leave our place and obtain his freedom if he had wanted to. I could even have brought him out of our place.
8. The following day, Sunday, was uneventful. I again told [Doble] and [his] companion that I was leaving to have dinner with my family. His friend, [Santiago], asked to leave with me, and we left the premises of the San Carlos Formation Complex uneventfully.
9. When, at around 8:00 A.M. the following morning (Monday), I was told that the wife of [Doble] was at the San Carlos Formation Complex gate, I confronted [Doble] and [Santos], and asked them why they did not tell me they were not husband and wife. They answered nothing.
10. When I heard allegations that [Doble] was being detained against his will, I set him apart, outside Bahay Pari, and then to San Carlos Seminary, and then asked him to tell me if he had indeed been detained against his will. In no way, whatsoever did he indicate that he was detained by anybody against his will. In fact, it would have been all to his advantage to say so if he had really been detained. And at that time he was free to just walk out of the gate if he had wanted to. Later on, he did leave with Bishop Socrates Villegas, who came in to intervene.
11. While [Doble] was away from Bahay Pari, [Santos] asked to leave Bahay Pari. She told me that [Doble] texted her, asking her to leave because there might be some trouble. After [ascertaining from] her that she could safely leave, I had her accompanied to an exit gate. But before leaving, I interviewed her and she repeatedly affirmed that she and [Doble] were not kidnapped. I got her to affirm the same in front of another priest and another witness. She was able to leave safely, escaping detection by government authorities.
12. It was very clear to me from the beginning of his entry in Bahay Pari to the time that I last saw him in San Carlos Seminary after having brought him there myself that [Doble] was not detained by [Ong] or other persons allied with him. In no way did [Doble] signify to me or to anybody else in Bahay Pari that he was being detained against his will. He willingly came and received sanctuary in Bahay Pari. The ones he seemed to be wary of were the government authorities.
13. In his room, [Doble] was accompanied only by [Santos]. So far as I know there were no armed persons with him. In fact, according to two persons with me in Bahay Pari, [Doble] was the one who had a gun which they saw. We had one or two security guards around the premises, not with [Doble], but their purpose was apparently to protect [Ong] and [Doble] from intruders.⁶⁸

⁶⁸ CA rollo, pp. 301-302.



Based on Bishop Bacani's affidavit, Ong, Santiago, Cortez, Doble and Santos all sought sanctuary at the San Carlos Seminary. They were brought there out of fear for their security following the magnitude of the impact of Ong's revelation. It was because of fear that Doble and Santos were brought to the seminary, and not because of petitioners and Ong who were in the same predicament. All of them voluntarily entered the seminary to seek protection and eventually left it on their own accord.

The contents of this statement by Bishop Bacani were neither controverted nor denied by Doble or his witnesses. Some points were even corroborated by Doble himself in his complaint, in which he stated that he met Bishop Bacani at the San Carlos Seminary and was transferred from one room to another, albeit for a different reason. The room transfers and the reason therefor as stated by Bishop Bacani were also corroborated by Santos in her recantation affidavit.

After the RTC received and examined all the sets of evidence passed upon by the panel, including those of petitioners and Ong, it correctly found no probable cause to order their arrest. Accordingly, it dismissed the criminal charge of serious illegal detention. As discussed, that power was lodged with the RTC, which validly exercised it without grave abuse of discretion.

Considering the foregoing, we deem it unnecessary to delve into the matter of the late filing of the petition for certiorari before the CA. While the Court does not approve of the nonobservance of the rules meant to facilitate the dispensation of justice, the CA's grant of due course to the petition eventually paved the way for the final and appropriate resolution of this case.

WHEREFORE, the petition is **GRANTED**. The CA Decision dated 20 April 2009 and Resolution dated 13 October 2009 in CA-G.R. SP No. 98187 are hereby **REVERSED** and **SET ASIDE**.

The Orders of the Regional Trial Court of Makati City, Branch 139, dated 17 April and 19 December 2006 dismissing Criminal Case No. 05-1768 are **REINSTATED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

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

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
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
MARIA LOURDES P. A. SERENO
Chief Justice