Supreme Court E-Library

SPECIAL THIRD DIVISION

[G.R. No. 210488; December 1, 2021]

JOSE MIGUEL T. ARROYO, *Petitioner*, *v.* **THE HON. SANDIGANBAYAN-FIFTH DIVISION and THE PEOPLE OF THE PHILIPPINES,** *Respondents*.

R E S O L U T I O N

CARANDANG, *J.*:

For resolution is the Motion for Reconsideration[1] filed by petitioner Jose Miguel T. Arroyo (Arroyo) assailing the Court's Decision[2] dated January 27, 2020, the dispositive portion of which reads:

> **WHEREFORE,** the instant Petition for Certiorari is **DISMISSED**. The Sandiganbayan's August 15, 2013 and November 6, 2013 Resolutions in relation to Criminal Case No. SB-12-CRM-0164 are **AFFIRMED**.
>
> **SO ORDERED.**[3] (Emphasis in the original)

Through the Field Investigation Office-Office of the Ombudsman (FIO-OMB), a Complaint[4] was filed charging Arroyo, his brother Ignacio "Iggy" Arroyo (Iggy), Manila Aerospace Products Trading Corporation (MAPTRA) President Hilario "Larry" De Vera (De Vera), and officials of the Philippine National Police (PNP) with violation of several administrative and penal laws including *inter alia* Section 3(e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

---

[1] *Rollo*, pp. 1547-1579.

[2] Decision dated January 27, 2020. Penned by Associate Justice Marvic M.V.F. Leonen, with the concurrence of Associate Justices Rosmari D. Carandang, Rodil V. Zalameda, Mario V. Lopez, and Samuel H. Gaerlan; id. at 1528-1546.

[3] Id. at 1546.

[4] Id. at 1181-1212.

Supreme Court E-Library

The FIO-OMB alleged that in 2009, the PNP purchased from MAPTRA one fully-equipped Robinson R44 Raven II Light Police Operational Helicopter for ₱42,312,913.10 and two Standard Robinson R44 Raven I Light Police Operational Helicopters for ₱62,672,086.90, for a total consideration of ₱104,985,000.00. Though the National Police Commission (NAPOLCOM) prescribed that the helicopters to be purchased should be brand new, only one brand new Robinson Raven II Helicopter was delivered while the two Standard Robinson Raven I Helicopters with Serial Numbers (SN) 1372 and 1374 delivered were allegedly pre-owned by Arroyo.

The FIO-OMB primarily relied on the Affidavit[5] executed by Archibald L. Po (Po), owner of Lionair, Inc. (Lionair) and Asian Spirit, Inc. (Asian Spirit), and the statements he made during the Senate Blue Ribbon Committee hearing implicating Arroyo as a participant in the alleged irregular procurement of the two pre-owned helicopters.

Po narrated that in 2003, Arroyo inquired about chartering helicopters from him. When Po informed Arroyo that there were no longer any helicopters available, he suggested to Arroyo that the latter purchase five Robinson R44 Raven I helicopters. Arroyo allegedly remitted to Po the US$475,000.00 (comprising of US$95,000.00 for each unit, plus other expenses) required deposit and Po's Lionair remitted the same to its manufacturer, Robinsons Helicopter Company (RHC). To facilitate the importation of the helicopters, Arroyo allegedly asked Po to course it through his other company, Asian Spirit, as it is located at the Clark Export Processing Zone and eligible to import tax free.[6]

While the respective Air Transportation Office (ATO) certificates of registration of the helicopters were in the name of Asian Spirit, Po alleged that Arroyo made him sign five deeds of sale over these helicopters and that he retained no copy.[7] Po

---

[5] Id. at 1471-1477.

[6] Id. at 1472-1473.

[7] Id. at 1473.

Supreme Court E-Library

maintained that Lionair provided maintenance services over the helicopters and sent bills to Arroyo who paid for them in cash.[8] Po added that in 2006, Arroyo wanted to sell the helicopters. To do this, Po suggested that Asian Spirit sell the helicopters to Lionair so that the customs duties and taxes could properly be paid before the helicopters were sold to third parties.[9]

In June 2009, after several negotiations and revisions in the proposal, Lionair submitted a proposal for the sale of the two pre-owned helicopters to MAPTRA at US$448,173.73 each, including taxes and other costs.[10] Po allegedly acceded to the request of MAPTRA to make it appear that MAPTRA is a marketing arm of Lionair so that MAPTRA could be authorized to sell Robinson helicopters to PNP in behalf of Lionair.[11] He averred that the two helicopters were turned over to MAPTRA in December 2009. Po claimed that MAPTRA paid Lionair the full purchase price on April 16, 2010 and the same was remitted to Arroyo.[12]

In his Counter-Affidavit,[13] Arroyo vehemently denied the allegations against him and insisted that he is a complete stranger to MAPTRA, the seller of the helicopters, or its representative, De Vera.[14] Arroyo explained that it was Lourdes T. Arroyo, Incorporated (LTA), through its President, Iggy, who transacted with Po for the advancement of money so that Po's Lionair could acquire five helicopters from RHC.[15] He added that he had divested from LTA long before the purchase of the helicopters from RHC.[16] He also offered the explanation given to him by Iggy that the wire transfer was made by way of advance lease scheme

---

[8] Id. at 1474.

[9] Id.

[10] Id. at 1475.

[11] Id. at 1476.

[12] Id. at 1476-1477.

[13] Id. at 920-938.

[14] Id. at 911.

[15] Id. at 913-914.

[16] Id. at 914.

Supreme Court E-Library

in favor of Po and Lionair.[17] Arroyo rationalized that the intention of LTA and Po's Lionair was to apply the advances made by LTA as rentals for the latter's use of the helicopters.[18]

In refuting the allegations against him, Arroyo also supplied copies of various documents including *inter alia* the Applications for Export Certificate of Airworthiness,[19] and Export Certificates[20] for the two helicopters issued and authenticated by the Federal Aviation Administration (FAA) of the United States (US)[21] showing that Lionair was the purchaser. Aircraft Invoices issued by RHC, and Certificates of Registration[22] issued by the ATO were also submitted to prove that Lionair was the owner of the helicopters.[23]

Arroyo also pointed out inconsistencies in the documents proffered by Po which supposedly showed his propensity for fabricating documents relative to the ownership and use of the subject aircrafts. He stressed that despite these inconsistencies, what remains obvious is that the helicopters were owned by Lionair and/or Asian Spirit, companies owned by Po, prior to the sale to PNP.[24]

On May 30, 2012, the Special Investigating Panel tasked to conduct a preliminary investigation issued a Joint Resolution[25] recommending *inter alia* the filing of criminal case against Arroyo and his co-accused for violation of Section 3(e) of R.A. No. 3019.[26]

---

[17] Id.

[18] Id. at 914-195.

[19] Id. at 961-962; 965-966.

[20] Id. at 963.

[21] Id. at 964.

[22] Id. at 970-971, 975.

[23] Id. at 915-916.

[24] Id. at 916-918.

[25] Id. at 1246-1385.

[26] Id. at 1381-1382.

Supreme Court E-Library

In finding probable cause, the Ombudsman (OMB) was not convinced that Arroyo had already divested himself of any interest in LTA long before the subject procurement. Though Arroyo was able to produce a Deed of Assignment[27] dated March 15, 2001 indicating that he had assigned his shares in LTA to Benito Araneta (Araneta), and that he became a shareholder of LTA again only on November 24, 2010, the OMB did not consider this as evidence of a valid transfer, except between him and the named assignee therein. The OMB highlighted that Section 63 of the Corporation Code[28] requires that the transfer must be properly recorded in the books of the corporation to be valid.[29] The OMB also pointed out that there is a stipulation in the Deed of Assignment[30] stating that:

> Section 4. *Irrevocable Proxy*. — Upon the signing of this Deed, the ASSIGNOR hereby appoints the ASSIGNEE as his duly constituted PROXY, with full power and authority to represent and vote the Subject Shares at any and all stockholder's meetings, or at any adjournment thereof, on all matters that may be brought before said meetings, including the election of directors, as fully to all intents and purposes as the ASSIGNOR might do if present and acting in person.[31]

---

[27] Id. at 944-945.

[28] Section 63 of Batas Pambansa Blg. 68 states:

> Section 63. *Certificate of stock and transfer of shares*. - The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.
>
> No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

[29] *Rollo*, pp. 1345-1347.

[30] Id. at 944-945.

[31] Id. at 945.

Supreme Court E-Library

For the OMB, the foregoing stipulation indicates that Arroyo is the true stockholder, even after the execution of the Deed of Assignment and that Araneta is only his proxy or representative.[32]

The OMB also relied on the Sinumpaang Salaysay of Domingo Lazo (Lazo), flight dispatcher of Lionair, who averred that Arroyo first contacted him in April 2004, and that Arroyo gave instructions to be followed in the use of the helicopters. The OMB found it also questionable that LTA was the one which leased the helicopters despite the fact that Arroyo had no more holdings in the corporation and that the members of his family used the helicopters.[33] The OMB also banked on the statement of Po that Arroyo instructed him in 2003 to register the helicopters under the name of Po's old company, Asian Spirit, for tax purposes.[34] Thus, even if the helicopters were registered under a person or entity different from Arroyo, the OMB concluded that a trust relationship existed between Arroyo and Po and that the beneficial ownership over the helicopters belonged to the former.[35]

The OMB also considered the subsidiary ledger Editha Solano-Juguan prepared, covering the period of May 2004 to May 2011 and showing that Lionair was able to collect from Arroyo ₱18,250,000.00 representing *inter alia* hangar fees, take-off and landing charges, expenses for maintenance, pilotage, gasoline, oil and lubricants, as well as fees for the renewal of aircraft certificate of registration and certificate of airworthiness. The subsidiary ledger also showed that Arroyo and his family were among those who used the helicopters.[36]

The OMB also found that the Aircraft Fleet Service Agreement produced by Iggy did not support the theory of Arroyo that LTA merely leased the helicopters from Lionair and that the rentals for

---

[32] Id. at 1347.

[33] Id. at 1348-1349.

[34] Id. at 1349-1351.

[35] Id. at 1349, 1352.

[36] Id. at 1352-1353.

Supreme Court E-Library

LTA's use of the helicopters would be applied to the money advanced by LTA to Lionair for the purchase of the helicopters.[37] The OMB highlighted Agreement No. 5 which states that:

> Upon execution of this agreement, the LESSEE shall immediately remit to LESSOR, the amount equivalent to Twenty Five (25%) percent of the Minimum Monthly Cost of Charter for Five (5) Helicopter units as advance payment, and thereafter, the same amount every 15th days of service.[38]

For OMB, this is an indication that the agreement is merely simulated because there is no reason for LTA to agree to this stipulation when it already advanced the payment for the helicopters.[39]

The OMB inferred that without the approval of Arroyo to sell the two helicopters to MAPTRA, the deal and contract of the latter with the PNP would not have prospered.[40]

Arroyo filed a Motion for Reconsideration[41] assailing the Joint Resolution of the OMB. However, in an Order[42] dated February 15, 2013, the OMB resolved to deny Arroyo's motion for lack of merit.[43]

Subsequently, an Information[44] docketed as SB-12-CRM-0164 was filed charging Arroyo, among others, for alleged conspiracy with several PNP officials and other private persons in the subject procurement in violation Section 3 (e) of R.A. No. 3019. The Information alleged that the sale of the two pre-owned helicopters, purportedly owned by Arroyo, caused undue injury to the PNP

---

[37] Id. at 1354.

[38] Id. at 1354-1355.

[39] Id. at 1355.

[40] Id. at 1356.

[41] Id. at 1088-1104.

[42] Id. at 1402-1430.

[43] Id. at 711, 1430.

[44] Id. at 588-599; 1390-1401.

Supreme Court E-Library

and the government in the amount of at least ₱34,632,187.50, representing the overpriced amount the PNP paid.[45] Arroyo voluntarily surrendered before the Sandiganbayan and posted the bail bond to obtain his provisional liberty.[46]

On May 27, 2013, Arroyo filed with the Sandiganbayan a Motion for Judicial Determination of Probable Cause,[47] seeking the dismissal of the case on the ground of lack of probable cause.

In a Resolution[48] dated August 15, 2013, the Sandiganbayan denied Arroyo's motion. It held that the prosecution's evidence sufficiently showed that there is probable cause that Arroyo participated in the transaction.

Arroyo filed a Motion for Reconsideration[49] but this was denied in a Resolution[50] dated November 6, 2013. Thereafter, on January 20, 2013, Arroyo filed a petition for *certiorari* and prohibition under Rule 65 of the Rules with prayer for temporary restraining order and/or preliminary injunction.

In his petition,[51] Arroyo pointed out that there are no direct overt acts and evidence that may be attributed to him and may implicate him to the offense charged, except for the uncorroborated testimony of Po.[52] Arroyo repleaded the documentary evidence he submitted comprising of official records of the Civil Aviation Authority of the Philippines such as letters of Asian Spirit in 2004;

---

[45] Id. at 597.

[46] Id. at 711.

[47] Id. at 881-908.

[48] Penned by Associate Justice Roland B. Jurado, with the concurrence of Associate Justices Alexander G. Gesmundo (now a Member of this Court) and Amparo M. Cabotaje-Tang; id. at 850-880.

[49] Id. at 1170-1178.

[50] Penned by Associate Justice Roland B. Jurado, with the concurrence of Associate Justices Alexander G. Gesmundo (now a Member of this Court) and Alex L. Quiroz; id. at 362-366.

[51] Id. at 3-45, 807-846.

[52] Id. at 822.

Approved Applications for Import Permit for the two helicopters; Applications for Certificate of Airworthiness; Aircraft Invoices; ATO Certificates of Registration and their respective renewals from 2004-2010; Deeds of Absolute Sale dated March 23, 2004 and March 30, 2004 between Lionair (as vendor) and Asian Spirit (as vendee); Secretary's Certificate dated March 23, 2004 and March 30, 2004; and Aircraft Lease Agreement between Asian Spirit (as lessor), and Lion Air (as lessee) – all indicating that Po and his companies, Asian Spirit and Lionair, were the owners of the subject helicopters.[53] Between the uncorroborated and hearsay testimonies insisting that Arroyo owned the helicopters and the documentary evidence proving Po and his companies' ownership over the helicopters, Arroyo maintains that the latter should prevail.[54]

Arroyo also highlighted that the OMB failed to distinguish him from LTA, stressing that the time of the material dates of the questioned transaction, he did not have any interest in LTA as he had divested from LTA on March 15, 2001. It was only on November 24, 2010, long after the sale to PNP, that he repurchased shares in LTA from Araneta.[55] Even Po and Renato Sia (Sia), General Manager of Lionair, clarified that it was LTA, not Arroyo, who gave the instruction to provide the deposit of US$500,000.00 to RHC through wire transfer.[56] He also claimed that there is no proof that he performed any act indicating his participation in the subject offense.[57] He also questioned the trust relationship which purportedly governed him and Po wherein he was the beneficial owner of the helicopters. He insisted that the speculative assumption of trusteeship should not prevail over the overwhelming evidence of ownership of Po, Lionair, and Asian Spirit.[58]

---

[53] Id. at 822-824.

[54] Id. at 825-828.

[55] Id. at 833-834.

[56] Id. at 830-832, 790-795.

[57] Id. at 833-836.

[58] Id. at 788-789, 836-838.

Supreme Court E-Library

Arroyo also averred that there is no proof of conspiracy between him and MAPTRA's De Vera as it was not shown that he has ever meet nor talked to De Vera. He stressed that De Vera himself admitted that he only dealt with Po when the helicopters were sold to PNP. He posited that since there was no proof of conspiracy, the Investigating Panel erred in finding probable cause against him.[59]

Arroyo argued that the Sandiganbayan's reliance on *Leviste v. Almeda*[60] is misplaced because an accused may assail a finding of probable cause when there is a clear grave abuse of discretion.[61]

In its Comment,[62] the People of the Philippines, through the Office of the Solicitor General (OSG), maintained that the Sandiganbayan correctly denied Arroyo's Motion for Judicial Determination of Probable Cause as none of the recognized instances where the Courts may intervene in the investigative functions of the OMB are present.[63] The OSG emphasized that the determination of the existence of probable cause, which led to the filing of the information, lies within the full discretion of the OMB.[64] Lastly, the OSG insisted that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' respective evidence.[65]

In his Reply,[66] Arroyo pointed out that Po, the prosecution's own witness, clarified during the preliminary investigation before the FIO-OMB that it was LTA, and not Arroyo which made the initial deposit to RHC.[67] He also reiterated that the mere use of the

---

[59] Id. at 797-800, 838-841.

[60] G.R. No. 177727, January 19, 2018.

[61] *Rollo*, pp. 800-802, 841-843.

[62] Id. at 704-722.

[63] Id. at 713-715.

[64] Id. at 714-717.

[65] Id. at 718-722.

[66] Id. at 729-740.

[67] Id. at 729-732.

helicopters in question cannot be equated with ownership.[68] He averred that the testimony of Lazo to the effect that he or his family owned the subject helicopters is hearsay and cannot be the basis of a finding of probable cause. He also asserted that the OMB and Sandiganbayan both ignored the documentary proofs he presented establishing his lack of interest in LTA during the time material to the case.[69] He also defended the remedy he resorted to in assailing the denial of his Motion for Judicial Determination of Probable Cause. He insisted that the Sandiganbayan cannot blindly follow the prosecutor's finding of probable cause and disregard the issues he raised.[70]

On January 27, 2020, the Court rendered its Decision[71] dismissing the petition for *certiorari* based mainly on the judicial policy of non-interference with the discretion of the OMB regarding the determination of probable cause. The Court declared that the petition had been rendered moot and academic since the Sandiganbayan had already judicially determined that there is probable cause to proceed with trial.[72] The Court added that even if the petition is given due course, it must still fail absent any grave abuse of discretion on the part of the OMB's finding of probable cause.[73] The Court found no grave abuse of discretion because the evidence adduced by the OMB provided basis to maintain a reasonable belief that Arroyo is the owner of the helicopters in question.[74] The Court was convinced that the OMB was able to discharge its duty of substantiating its finding of probable cause.[75] The Court stressed that mere disagreement with

---

[68] Id. at 732-733.

[69] Id. at 735-737.

[70] Id. at 738-739.

[71] Id. at 1528-1546.

[72] Id. at 1540.

[73] Id.

[74] Id. at 1541-1543.

[75] Id. at 1543-1544.

Supreme Court E-Library

the appreciation of the evidence by the OMB does not translate to jurisdictional error.[76]

In his Motion for Reconsideration,[77] Arroyo asks the Court to take a second hard look at his petition. Arroyo insists that there is an abundance of proof that Po, Lionair, or Asian Spirit were the owners of the helicopters.[78] Arroyo highlights the testimonies of Sia and Po wherein they admitted that Lionair and Asian Spirit were the true owners of the helicopters.[79]

The OSG opposed the Motion for Reconsideration of Arroyo, insisting that the arguments raised are mere rehash of his petition for *certiorari* that the Court had already passed upon.

In his Supplemental Reply,[80] Arroyo argued that conspiracy must first be established in order that probable cause, as against a private person, may be appreciated in offenses punished under R.A. No. 3019, which are generally committed by public officers.[81] Arroyo highlighted that the evidence relied upon by the Sandiganbayan in judicially determining probable cause provided nothing to show who among the accused public officers in the case he conspired with and how the conspiracy was carried out.[82]

Issues

The critical issues to be resolved in this Motion for Reconsideration are:

1. Whether the Sandiganbayan committed grave abuse of discretion in finding probable cause and exercising jurisdiction over a case for violation of Section 3 (e) of R.A. No. 3019 against

---

[76] Id. at 1545.

[77] Id. at 1547-1577.

[78] Id. at 1550-1553.

[79] Id. at 1554-1557.

[80] Id. at 642-682.

[81] Id. at 665.

[82] Id. at 670.

Supreme Court E-Library

Arroyo, a private individual, despite the absence of evidence of conspiracy with any of the respondent public officers;

2. Whether Arroyo's right to speedy disposition of the case against him had been violated on account of the length of time of his prosecution vis-à-vis the lack of evidence against him and the hanging issue of the Sandiganbayan's jurisdiction over the case.

Ruling of the Court

The Motion for Reconsideration of Arroyo is meritorious.

I

The OMB and Sandiganbayan committed grave abuse of discretion in finding probable cause against Arroyo. The evidence the prosecution adduced to substantiate its claim of conspiracy is insufficient to maintain a reasonable belief that Arroyo is probably guilty of violating Section 3(e) of R.A. No. 3019. The element of conspiracy with a public officer was not established.

There are two recognized classes of probable cause: (1) executive and (2) judicial. Executive probable cause is determined by the prosecutor during preliminary investigation. Section 1, Rule 112 of the Rules of Court states that probable cause is established when there is "sufficient [evidence or] 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." In contrast, under the Constitution, the determination of probable cause is made by a judge in issuing a warrant of arrest. Section 5(a), Rule 112 of the same Rules reiterated that a "judge shall personally evaluate the resolution of the prosecutor and its supporting evidence" in issuing a warrant of arrest.[83]

In a judicial determination of probable cause, the judge must ascertain whether a warrant of arrest should be issued against the accused. He must satisfy himself that based on the evidence submitted, there is a necessity for placing the accused under

[83] *Baya v. Sandiganbayan*, G.R. Nos. 204978-83, July 6, 2020.

Supreme Court E-Library

custody in order not to frustrate the ends of justice. The "personal determination" required by the Constitution to be performed by a judge in the issuance of a warrant of arrest pertains to "the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause."[84] In *Borlongan, Jr. v. Pena*,[85] the Court explained how this duty is performed:

> [T]o this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. **What he is never allowed to do is to follow blindly the prosecutor's bare certification as to the existence of probable cause. Much more is required by the constitutional provision. Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he cannot just rely on the bare certification alone but must go beyond it. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it.** He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.[86] (Citations omitted; emphasis and underscoring supplied)

Similarly, in *People v. Gray*,[87] the Court elucidated the duty of a judge in resolving the existence of probable cause for the issuance of warrant of arrest as follows:

> What the law requires as personal determination on the part of a judge is that **he should not rely *solely* on the report of the investigating prosecutor**. This means that **the judge should consider not only the report of the investigating prosecutor but also the affidavit and**

---

[84] *Borlongan, Jr. v. Pena*, 634 Phil. 179, 200 (2010).

[85] Id.

[86] Id. at 200-201.

[87] 639 Phil. 535 (2010).

the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.

The Court has also ruled that the personal examination of the complainant and his witnesses is not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest. The necessity arises only when there is an utter failure of the evidence to show the existence of probable cause. Otherwise, the judge may rely on the report of the investigating prosecutor, provided that he likewise evaluates the documentary evidence in support thereof.[88] (Citations omitted; italics in the original; emphasis and underscoring supplied)

Accordingly, the Sandiganbayan must exercise independent judgment, personally evaluate the documents and evidence adduced at the preliminary investigation level, and determine for itself the existence of probable cause for the issuance of a warrant of arrest.

As a rule, the determination of probable cause is an executive, not a judicial, function. Following the fundamental principle of separation of powers, it is generally not for a Court to disturb the conclusion made by a public prosecutor.[89] The Court has found in a number of cases that it is superfluous for an accused to seek the judicial determination of probable cause because the Sandiganbayan already acted and proceeded independently of the executive determination of probable cause.[90]

However, there is a recognized exception to the general rule on non-interference. In *Duque v. Ombudsman and Fact-Finding Investigation Bureau*,[91] the Court explained:

---

[88] Id. at 549-550.

[89] *Tupaz v. Office of the Deputy Ombudsman for the Visayas*, G.R. Nos. 212491-92, March 6, 2019.

[90] *Sy v. Sandiganbayan*, G.R. No. 240855, October 5, 2020; *Balindong v. Court of Appeals*, 771 Phil. 456 (2015).

[91] G.R. Nos. 224648, 224805-07, 225188 & 225277, August 28, 2019.

Supreme Court E-Library

x x x [T]he Court is not precluded from reviewing the action of the Office of the Ombudsman when it is shown to be tainted with grave abuse of discretion that amounts to lack or excess of jurisdiction, in which case its *certiorari* jurisdiction under Section 1, Article VIII of the Constitution may be exceptionally invoked. Indeed, when the outcome of the preliminary investigation by the Office of the Ombudsman is shown to have resulted from the exercise of 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, **the Court may step in, and 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. Although judicial policy usually calls for the widest latitude of deference to the findings by the Office of the Ombudsman, the Court should never shirk from exercising its power of judicial review whenever the circumstances warrant in order to determine whether or not the findings are supported by the facts, and by the law. Surely, the Office of the Ombudsman's determination of probable cause is not unlimited.** The Court ought always to be mindful of the primary objectives of preliminary investigation to secure the innocent against hasty, malicious and oppressive prosecution, and to protect the innocent from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, while at the same time saving the State from useless and expensive trials.[92] (Citations omitted, emphases supplied)

While the issuance by the Sandiganbayan of a warrant of arrest upon filing of the Information and supporting papers already implies the determination of probable cause for the offense imputed against Arroyo, the apparent grave abuse of discretion on the part of the prosecution warrants a reversal of the finding of probable cause.

The Court had previously enumerated in *Brocka v. Enrile*,[93] the exceptional circumstances wherein criminal prosecution may be restrained or stayed by injunction, preliminary or final. The recognized exceptions include:

---

[92] Id.

[93] 270 Phil. 271 (1990).

Supreme Court E-Library

a. To afford adequate protection to the constitutional rights of the accused;

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

c. When there is a pre-judicial question which is sub judice;

d. When the acts of the officer are without or in excess of authority;

e. Where the prosecution is under an invalid law, ordinance or regulation;

f. When double jeopardy is clearly apparent;

g. Where the court has no jurisdiction over the offense;

h. Where it is a case of persecution rather than prosecution;

i. Where the charges are manifestly false and motivated by the lust for vengeance; and

j. When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied.[94] (Citations omitted)

The present case may fall under the second category, "[w]hen necessary for the orderly administration of justice or to avoid oppression x x x." This is due to the fact that the Joint Resolution and the supporting evidence adduced during the preliminary investigation by the OMB failed to substantiate and demonstrate how Arroyo conspired with the other accused public officers, an essential element in prosecuting a private individual of violating Section 3 (e) of R.A. No. 3019. The reasoning given by the OMB are mere implications of ownership by Arroyo of the subject helicopters, as against the documentary proofs that LTA, a corporation distinct from Arroyo and which advanced the money for the purchase of the helicopters. This is clearly different from the ownership of Lionair, Asian Spirit, and MAPTRA, the true owners of the helicopters.

The Court is mindful that it is not a trier of facts and that the calibration of evidence to determine whether there is probable cause to pursue a case against Arroyo necessarily involves questions of fact that cannot be entertained in a petition for *certiorari*.

---

[94] Id. at 276-277.

Supreme Court E-Library

Nevertheless, after a judicial review of the case, the Court finds that the OMB has grossly misappreciated the attendant and clear facts in a manner that is tantamount to grave abuse of discretion amounting to lack or excess of jurisdiction.

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is consistent with "the principle that every crime is defined by its elements, without which there should be-at the most-no criminal offense."[95] Arroyo is charged with violating Section 3(e) of R.A. No. 3019. The elements of the offense defined in Section 3(e) are enumerated as follows:

> x x x *(a)* that the accused must be a public officer discharging administrative, judicial, or official functions **(or a private individual acting in conspiracy with such public officers)**; *(b)* that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and *(c)* that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[96] (Emphasis and underscoring supplied)

While the first element of Section 3 (e) of R.A. No. 3019 explicitly requires that the offender is a public officer, private persons, **when acting in conspiracy with public officers**, may be indicted, and if found guilty, be held liable for the offense.[97] Though the existence of conspiracy is a factual issue that is best threshed out in a full-blown trial on the merits, **the prosecution has a duty to establish at the preliminary investigation level that there is a reasonable belief that Arroyo connived with public officers to commit the offense charged against him.** Otherwise, the Sandiganbayan cannot take cognizance of the case and put Arroyo on trial. The

---

[95] *Sy Thiong Shiou v. Sy Chim*, 601 Phil. 510, 523 (2009).

[96] *Fuentes v. People*, 808 Phil. 586, 593 (2017); citing *Cambe v. Ombudsman*, 802 Phil. 190 (2016) and *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91 (2015).

[97] *Singian Jr. v. Sandiganbayan*, 718 Phil. 455 (2013).

Supreme Court E-Library

court cannot blindly follow the prosecutor's certification as to the existence of probable cause.[98]

Noticeably, even the testimony of De Vera, owner of MAPTRA, who admitted not personally knowing Arroyo, supports the conclusion that Arroyo is not connected to MAPTRA, as revealed in the following exchange:

SEN. EJERCITO ESTRADA.	Okay. Let me ask - before I get back to you - **Mr. de Vera, kilala mo ba si First Gentleman?**
MR. DE VERA.	**Not personally, Your Honor**.[99] (Emphasis supplied)

The quoted testimony is consistent with the theory that Arroyo could not have connived with MAPTRA, the business entity which sold the helicopters to PNP, because its owner does not even personally know him.

The element of conspiracy between the public officers and Arroyo has not been proven by any connection to achieve even the low threshold of probable cause and find him probably liable for violation of Section 3(e) of R.A. No. 3019. This is not a mere disagreement on the appreciation of evidence by the OMB but a glaring hole or gap in the prosecution's case that it failed to fill to maintain a reasonable belief that Arroyo connived with public officers in the procurement of the helicopters. Since the OMB cannot establish the element of conspiracy, the case of the State against Arroyo will immediately fall apart and there will be no need to provide proof for the other elements of the offense to support a reasonable belief that Arroyo is complicit in the purported irregularities in the procurement of the helicopters.

Here, a careful scrutiny of all the evidence the prosecution submitted to establish the existence of probable cause against Arroyo reveals that no evidence of the prosecution demonstrated the manner by which Arroyo connived with any public officer

---

[98] *Borlongan v. Pena*, supra note 85 at 201.

[99] TSN Senate Blue Ribbon Committee Hearing dated August 2, 2011, p. 1.

Supreme Court E-Library

in the purported anomalous procurement. Even if the unverified statements of the prosecution's witnesses are admitted, these still fail to show how Arroyo connived with any public officer. The Sandiganbayan should have gone beyond the Joint Resolution of the OMB to determine the existence of any link that would connect Arroyo's participation in the subject procurement in conspiracy with any of the respondent public officers and not just assume that LTA and Arroyo are one and the same. There is simply no overt act that could be attributed to Arroyo showing that he conspired with any of the respondent public officers.

Had the Sandiganbayan carefully reviewed the OMB's report, supporting documents, and the submissions of Arroyo, the graft court would have readily seen that the OMB erroneously equated the ownership of LTA as Arroyo's ownership. This conclusion contravenes the fundamental principle in corporation law that a corporation has a separate juridical entity from its directors, officers, and shareholders. Section 2 of the Corporation Code, as amended, defines a corporation as:

> x x x [A]n artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incidental to its existence.

To sustain a finding of probable cause against Arroyo, the prosecution must necessarily justify the deviation from the general principle of separate juridical entity and the application of piercing of the corporate veil of entity before Arroyo may be held for trial. It is worth noting that at the time of the disputed procurement, Arroyo was not even a shareholder, director, nor an officer of LTA. He had already divested from LTA and assigned his shares to Araneta, as evidenced by the Deed of Assignment[100] and Secretary's Certificate.[101]

Even if it is proven that the transfer was not registered in LTA's stock and transfer book, this does not automatically negate the fact that Arroyo assigned his shares to Araneta. Arroyo even presented

---

[100] *Rollo*, pp. 944-945.

[101] Id. at 957.

Supreme Court E-Library

Form No. 1954 or the Certificate Authorizing Registration[102] from the Bureau of Internal Revenue certifying that the capital gains tax[103] and documentary stamp tax[104] for the transfer of his shares to Araneta were duly paid. Having no interest in LTA during the period leading up to the procurement, Arroyo could not have connived with any public officer in carrying out the procurement.

It is also worthy to point out that even if the transfer of shares carried out in the Deed of Assignment was not registered in the stock and transfer book, this is not an *indicium* that no assignment of shares took place. The transfer of shares was in fact supported by documentary evidence including *inter alia* those proving that the corresponding capital gains tax and documentary stamp tax were paid. Moreover, the irrevocable proxy stipulation in the Deed of Assignment is not inconsistent with the terms of the deed and was intended to allow the assignee to exercise the rights of the assignor immediately before the transfer is reflected in the books of the corporation.

Furthermore, one of the justifications of the FIO-OMB in finding probable cause to charge Arroyo is the hearsay statement of Lazo, a flight dispatcher, during the Senate Blue Ribbon Committee hearing, the pertinent portion of which is reproduced below:

SEN. LACSON.	Hindi nga, ano ang ibig sabihin nuon? Sino ang may-ari?
MR. LAZO.	**Ang pagkasabi po sa akin ni Mr. Po, my former boss. Si FG po ang may ari**.[105] (Emphasis supplied)

While hearsay evidence may be considered at the preliminary investigation stage in finding probable cause, the prosecution committed grave abuse of discretion in disregarding the

---

[102] Id. at 947.

[103] Id. at 950.

[104] Id. at 953.

[105] TSN Senate Blue Ribbon Committee Hearing dated August 11, 2011, pp. 6-7; *rollo*, p. 888.

Supreme Court E-Library

documentary evidence Arroyo presented to refute the claim that he participated in the subject procurement. Between the hearsay statement of Lazo and the documentary evidence submitted by Arroyo, the OMB and the Sandiganbayan committed grave abuse of discretion in giving weight to the former and in disregarding the latter.

In this case, despite the statements given by witnesses of the prosecution supporting Arroyo's contention that he is not the owner of the two helicopters, the OMB and the Sandiganbayan disregarded these and continued to conclude that LTA and Arroyo are one and the same. Likewise, the OMB and Sandiganbayan erred in concluding that the frequent use of the helicopters by Arroyo and his family is evidence of his ownership since Lionair is in the business of offering its fleet to selected clients.

When the evidence submitted by the prosecution contradicts its own claim of conspiracy, the OMB would be committing grave abuse of discretion in finding probable cause against the private individual respondent. Likewise, the Sandiganbayan would be committing grave abuse of discretion in upholding the prosecution's finding of probable cause, through the issuance of a warrant of arrest, when the evidence relied upon shows that Arroyo had already divested from LTA approximately eight years before the questioned procurement. When these factors are taken together with the fact that the prosecution failed to allege and demonstrate how Arroyo connived with any of the public officer respondents at any point during the preliminary investigation, both the OMB and Sandiganbayan gravely erred in finding probable cause and putting him on trial. Accordingly, the Sandiganbayan committed grave abuse of discretion in issuing the warrant of arrest and in assuming jurisdiction over the case.

II

The OMB did not violate Arroyo's right to speedy disposition of the case against him.

The Constitution in Article III, Section 16 provides:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Supreme Court E-Library

The Court recognized in *Cagang v. Sandiganbayan*[106] that:

> **The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case.** Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[107] (Emphasis supplied)

In this case, while the case had been pending for almost a decade now from the date (May 30, 2012) the Information against Arroyo was filed, there is no proof to show that the period was characterized by vexatious, capricious or oppressive delays amounting to a violation of his right to speedy disposition of the case against him. It must be highlighted that the administrative and criminal aspects of the subject procurement involved approximately 33 respondents. The submissions of each party had to be thoroughly reviewed by the OMB. The resolution of the complex factual and legal issues involved in the criminal case against Arroyo cannot be sacrificed in favor of expediency especially when public money is involved. Therefore, a mere mathematical computation is not enough to conclude that his right to speedy disposition of cases was violated.

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioner Jose Miguel T. Arroyo is hereby **GRANTED**. The Sandiganbayan is **ORDERED** to drop petitioner Jose Miguel T. Arroyo from the Information filed in the criminal case docketed as SB-12-CRM-0164 at any stage of the proceedings.

SO ORDERED.

---

[106] G.R. Nos. 206438 & 206458, July 31, 2018.

[107] Id.

Supreme Court E-Library

Zalameda, M. Lopez, and *Gaerlan, JJ.*, concur.

Leonen, J., dissents, see separate opinion.

APPEARANCES OF COUNSEL

Topacio Law Office for Jose Miguel T. Arroyo.
Office of the Special Prosecutor for respondents.

DISSENTING OPINION

LEONEN, *J.*:

This Court must not interfere with the Office of the Ombudsman's exercise of prerogatives, unless there is clear showing of grave abuse of discretion. Allegations that it has misappreciated evident facts are not sufficient to establish that it gravely abused its discretion.

This resolves the Motion for Reconsideration[1] filed by Jose Miguel T. Arroyo, praying for the reconsideration of this Court's Decision[2] that affirmed the Sandiganbayan's Resolutions[3] and Information in Criminal Case No. SB-12-CRM-0164. The Sandiganbayan Resolutions denied Arroyo's Motion for Judicial Determination of Probable Cause[4] and affirmed the Office of the Ombudsman's finding of probable cause in indicting Arroyo for the violation of Section 3(e) of Republic Act No. 3019.

In 2011, the Office of the Ombudsman created a panel to investigate the alleged anomalies in the purchase of light

---

[1] *Rollo*, pp. 1547-1577.

[2] *Arroyo v. Sandiganbayan Fifth Division*, G.R. No. 210488, January 27, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66176> [Per J. Leonen, Third Division].

[3] *Rollo*, pp. 46-76, 362-366. The August 15, 2013 and November 6, 2013 Resolutions were penned by Associate Justice Roland B. Jurado and concurred in by Associate Justices Alexander G. Gesmundo (now a member of this Court) and Amparo M. Cabotaje-Tang, and Associate Justices Gesmundo and Alex L. Quiroz, respectively, of the Fifth Division of Sandiganbayan.

[4] Id. at 77-105.

Supreme Court E-Library

operational police helicopters by the Philippine National Police in 2009. The investigation resulted in a filing of a complaint against Arroyo, his brother Ignacio Arroyo, Hilario De Vera, and other officials of the Philippine National Police.[5]

The Office of the Ombudsman found that two Robinson R44 Raven helicopters preowned by Arroyo were sold to the Philippine National Police through the Manila Aerospace Products Trading Corporation in 2009.[6] This was despite the rule that the helicopters must be brand new.[7] Thus, Arroyo and others were indicted for violating Section 3 (e) of Republic Act No. 3019 on the ground that the sale caused undue injury to the Philippine National Police and the government.[8]

Arroyo voluntarily surrendered before the Sandiganbayan and posted the bail bond to obtain his provisional liberty. During arraignment, he pleaded not guilty as a condition precedent in obtaining authority to travel abroad.[9]

Arroyo later filed a Motion for Judicial Determination of Probable Cause,[10] praying for the dismissal of the criminal case. He alleged that there was no evidence that he owned the two helicopters and that the evidence on record instead showed that it was Archibald Po or his companies, Lion Air and Asian Spirit, that owned the helicopters. He added that there was no evidence that pointed him as a party or participant, in any manner or degree, to the purchase of the helicopters and that there was absolutely no proof of conspiracy. Finally, he claimed that the lack of probable cause against him justifies the dismissal of the case.[11]

---

[5] Id. at 6-7.

[6] Id. at 445-446.

[7] Id. at 446.

[8] Id. at 592-598.

[9] Id. at 711.

[10] Id. at 77-105.

[11] Id. at 11.

Supreme Court E-Library

The Sandiganbayan denied his Motion. It concluded that there was probable cause that Arroyo participated in the transaction based on the evidence on record.[12] It ruled:

> Based on the foregoing discussion, the existence of the elements of Section 3 (e) of [Republic Act] No. 3019 is undisputed. It is evident that: (1) all the accused are public officers, being members of the [Philippine National Police], while Arroyo and De Vera are private individuals charged in conspiracy with the [Philippine National Police] officers; (2) the alleged acts were committed in relation to their public positions; (3) the transactions in question allegedly caused undue injury to the [Philippine National Police] vis-à-vis the accused public officers and the Government; (4) that the transaction gave unwarranted benefits, advantage[,] and preference to Arroyo and De Vera; and, (5) the accused acted with manifest partiality, evident bad faith or, at the very least, gross inexcusable negligence in the purchase of two (2) units standard Robinson R44 Raven I helicopter and one (1) unit fully-equipped Robinson R44 Raven II helicopter.[13]

Moreover, the Sandiganbayan held that Arroyo cannot insist on a hearing for judicial determination of probable cause as he cannot determine beforehand how exhaustive the judge's examination of the records should be. It explained that the extent of the judge's examination depends on the exercise of their sound discretion as the circumstances of the case require. The Sandiganbayan ruled that the proper procedure was followed in determining probable cause for filing the Informations. Absent evidence to the contrary, it cannot reverse or overturn the Ombudsman's findings.[14]

Arroyo moved for reconsideration, but it was denied.[15]

Arroyo filed a Petition for Certiorari and Prohibition[16] under Rule 65 before this Court. In his petition, he mainly argued that the Sandiganbayan committed grave abuse of discretion

---

[12] Id. at 46-76.

[13] Id. at 12.

[14] Id. at 61.

[15] Id. at 362-366.

[16] Id. at 3-45.

Supreme Court E-Library

in disregarding the lack of evidence that he owned the two helicopters.[17]

In its Decision, this Court dismissed the petition, the dispositive portion of which reads:

> WHEREFORE, the Petition for Certiorari is DISMISSED. The Sandiganbayan's August 15, 2013 and November 6, 2013 Resolutions in relation to Criminal Case No. SB-12-CRM-0164 are AFFIRMED.[18]

Hence, Arroyo filed this Motion for Reconsideration.[19]

In his Motion, petitioner reiterates that respondent erred in finding probable cause against him on account of his ownership of helicopters. He submits that there is no prima facie nor substantial proof that he owned the helicopters. On the contrary, evidence allegedly shows that he did not own them.[20]

Petitioner stresses that the only proof of his alleged ownership is the uncorroborated testimony of Po. He claims that this cannot prevail over several documentary evidence showing that Po and his company are the real owners of the helicopters. He adds that Po and his companies consistently exercised rights of ownership over the helicopters until they were sold to the government.[21] Po's ownership is further supported by his payment of taxes for the income from the sale of the helicopters to the government.[22]

Petitioner refutes the claim that Po's testimony was supported by the testimony of three witnesses, namely Renato Sia, Police Superintendent Claudio Gaspar, Jr., and Domingo Lazo. He claims that during the Senate Blue Ribbon Committee hearing, Sia, as general manager of Lion Air, stated that it was Asian Spirit

---

[17] Id. at 17.

[18] *Arroyo v. Sandiganbayan Fifth Division*, G.R. No. 210488, January 27, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66176> [Per J. Leonen, Third Division].

[19] *Rollo*, pp. 1547-1577.

[20] Id. at 1549-1550.

[21] Id. at 1551-1553.

[22] Id. at 1556.

Supreme Court E-Library

that owned the helicopters. Meanwhile, Gaspar did not testify that petitioner owned the helicopters. In his Counter-Affidavit, he merely stated that he was placed on special detail at the Office of the President and was instructed to fetch members of the first family. He allegedly also confirmed that the helicopters were owned by Lion Air. Lastly, Lazo's statement that Arroyo owned the helicopters was mere hearsay.[23]

Petitioner stresses that the first family used the helicopters due to his brother's lease agreement with Po, to which he was not a party. He further asserts that respondent erred in sustaining the Office of the Ombudsman's findings that he leased Lion Air's hangar beginning 2004 for ₱10,000.00 a month and paying for the hangar fees, operational expenses, gasoline, and renewal of the registrations. He adds that he already disputed the authenticity of the subsidiary ledger evidencing these payments. Moreover, he alleges that the bookkeeper never identified him as the payor of the fees.[24]

Petitioner belies the Office of the Ombudsman's finding that he advanced the payment for Lion Air's purchase of the helicopters. As clarified by Po, it was Lourdes T. Arroyo, Inc. that paid the initial deposit for Lion Air. He claims that this was supported by Sia's testimony, which pointed out that the instruction to open an account at the Union Bank for the payment of the helicopters was from Lourdes T. Arroyo, Inc., and not from the petitioner.[25]

Contrary to the finding of the Office of the Ombudsman, he contends that the divestment of his shares in Lourdes T. Arroyo, Inc. was recorded in the stock and transfer book of the corporation and evidenced by the payment of tax and a certification of divestment of interest issued by the corporation. He argues that Section 4 of the deed of assignment that provides for the appointment of the assignee as a proxy is only meant to make the transfer of the interest immediately executory. He allegedly sold

---

[23] Id. at 1553-1555.

[24] Id. at 1555-1557.

[25] Id. at 1559-1561.

Supreme Court E-Library

his interest in the corporation long before the questioned sale and he only repurchased the shares after the helicopters were sold.[26]

On the allegations of conspiracy, petitioner claims that there is no sufficient evidence to show that there was a trust agreement between him and Po, considering that Po's testimony was baseless. Moreover, the money paid for the helicopters came from Lourdes T. Arroyo, Inc., not from the petitioner. He further stresses that there is no proof that he was involved in the sale of the helicopters and that it is absurd to claim that he was the true owner when the allegations only stated that he only received half of the purchase price.[27]

Petitioner further emphasizes that there is no allegation of him influencing the Philippine National Police in the sale of the helicopters. There was no proof that he took part in a conspiracy. Even Po denied that he mentioned petitioner in his transactions with De Vera. De Vera also denied that he personally knew petitioner. Without proof of conspiracy with public officers, he claims he cannot be charged under Republic Act No. 3019.[28]

Lastly, petitioner asserts that when he filed his Motion for Determination of Probable Cause, there was yet an order finding probable cause for the issuance of an arrest warrant. He claims that up until this time, there is no warrant of arrest issued against him. Thus, when he was arraigned as a requisite for his motion to travel, respondent did not issue an order finding probable cause for the issuance of an arrest warrant. His arraignment before respondent was only a condition precedent in obtaining an authority to travel abroad. Thus, during his arraignment, he had no intent to waive his right to question the judicial finding of probable cause.[29]

In its Comment,[30] respondent argues that petitioner's motion is merely a rehash of his arguments in his earlier Petition. It points

---

[26] Id. at 1562-1563.

[27] Id. at 1564-1568.

[28] Id. at 1569-1573.

[29] Id. at 1575-1576.

[30] Id. at 1631-1645. This has been revised to reflect the correct pagination in Volume II of the Rollo.

Supreme Court E-Library

out that the Motion raises no substantial arguments for this Court to reconsider its Decision. Ultimately, petitioner failed to establish that respondent acted with grave abuse of discretion.[31]

Respondent contends that petitioner's arraignment rendered his Petition moot. His arraignment for travel is permanent because the Information under which he was conditionally arraigned was not subsequently amended. The pretrial and trial already proceeded where the prosecution already rested its case and the defense has commenced with the presentation of evidence. In participating in the pretrial and trial proceedings, petitioner has availed of the plain, speedy, and adequate remedy. His subsequent recourse is to appeal the adverse decision that may be rendered by the Sandiganbayan.[32]

Moreover, respondent explains that the purpose of the judicial determination of probable cause is to determine the existence of probable cause for the issuance of a warrant of arrest. Considering petitioner's voluntary appearance and posting of bail, there is no need to issue a warrant of arrest. It adds that a motion for judicial determination of probable cause is superfluous, even prohibited under the Revised Guidelines for Continuous Trial of Criminal Cases.[33]

Moreover, petitioner allegedly failed to show that the Office of the Ombudsman acted with grave abuse of discretion to warrant interference with its exercise of investigatory and prosecutory powers. Probable cause does not have to be based on clear and convincing evidence of guilt. Respondent argues that the Office of the Ombudsman correctly determined that there was probable cause against petitioner. It did not conduct the preliminary investigation in an arbitrary or despotic manner. At this stage, there is no need to assess the evidence in detail and the judge only needs to personally evaluate the report and supporting documents by the prosecution.[34]

---

[31] Id. at 1632-1633.

[32] Id. at 1634-1635.

[33] Id. at 1634.

[34] Id. at 1635-1638.

Supreme Court E-Library

Respondent submits that there is no reason to dismiss the case against petitioner and his contentions are factual and evidentiary in nature. The errors he raised are, at best, errors of judgment, which may not be corrected through a writ of certiorari.[35]

In any case, respondent claims that there is sufficient evidence showing petitioner's involvement in the transaction. Petitioner's defenses go into the probative value and weight of the evidence, which should be resolved in a full-blown trial. Technical rules of evidence do not apply in a preliminary investigation.[36]

In his Reply,[37] petitioner rejects the claim that his petition is moot considering that the trial is still ongoing. He reasons that there is still a relief that can be granted because the reversal of the finding of probable cause will necessarily result in the termination of the trial. Petitioner asserts that the proceedings may be enjoined because the acts of the officer are without or in excess of authority and amount to persecution rather than prosecution.[38]

Moreover, he posits that his participation in the proceedings is not the plain, speedy, and adequate remedy contemplated under Rule 65. In any case, the petition may still prosper despite the availability of this remedy due to its exceptional circumstances, namely, (a) public welfare and public policy are involved; (b) interest of substantial justice so requires; (c) and the assailed order amounts to an oppressive exercise of judicial authority.[39]

Petitioner reiterates that respondent has no jurisdiction over him absent evidence that he acted in conspiracy with his coaccused, who are public officers. He repeats that there is no proof that he owned the helicopters.[40] In any case, even if he owned them or had interest in Lourdes T. Arroyo, Inc., this does not necessarily

---

[35] Id. at 1638-1639.

[36] Id. at 1640-1641.

[37] Id. at 1610-1627.

[38] Id. at 1611-1613.

[39] Id. at 1612-1621.

[40] Id. at 1613-1617.

Supreme Court E-Library

translate to probable cause because there is no proof that he participated in the sale.[41]

Petitioner maintains that there is grave abuse of discretion because "there has been a gross misapprehension of facts."[42] He further claims that the issues he raised, such as his divestment from Lourdes T. Arroyo, Inc., the ownership of helicopters by Lion Air, and the absence of conspiracy, are not factual issues because they are matters of record.[43]

The sole issue is whether or not respondent Sandiganbayan committed grave abuse of discretion in denying petitioner Jose Miguel T. Arroyo's Motion and affirming the finding of probable cause to charge petitioner. Subsumed under this issue is whether or not the Office of the Ombudsman committed grave abuse of discretion in finding probable cause against petitioner.

I vote to deny the motion.

I

As a rule, this Court does not interfere with the Office of the Ombudsman's exercise of investigatory and prosecutory prerogatives, unless there is clear showing of grave abuse of discretion.[44] It is an executive function that must be respected based on the principle of separation of powers.[45]

The Office of the Ombudsman is given wide latitude to act on criminal complaints. This is in consonance with its unique role as mandated by the Constitution.[46]

---

[41] Id. at 1618-1622.

[42] Id. at 1622.

[43] Id. at 1625.

[44] *Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69 (2010) [Per J. Carpio, Second Division].

[45] *Dichaves v. Office of the Ombudsman*, 802 Phil. 564 (2016) [Per J. Leonen, Second Division].

[46] Id.

Supreme Court E-Library

Moreover, the policy of noninterference is due to the highly factual nature of determination of probable cause.[47] This Court is not a trier of facts. As such, we must defer to the factual findings of the Office of the Ombudsman given its power to investigate. It is in a "better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause."[48] Given the facts and circumstances of a case, it has the discretion to determine whether a criminal case should be filed. If the complaint is insufficient in form and substance, it can dismiss the complaint; otherwise, it can continue with the inquiry and investigation.[49]

At the preliminary investigation, the Office of the Ombudsman determines probable cause, which merely involves weighing of facts and circumstances and relying on common sense, without resorting to technical rules of evidence.[50] "[A] preliminary investigation is merely an inquisitorial mode of discovering whether . . . there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it.[51]

"Being merely based on opinion and belief, a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction."[52] It does not demand clear and convincing evidence. It does not establish absolute certainty of guilt. Probable cause is not actual and positive cause.

---

[47] *People v. Court of Appeals*, 361 Phil. 401 (1999) [Per J. Panganiban, Third Division].

[48] *Dichaves v. Office of the Ombudsman*, 802 Phil. 564, 590 (2016) [Per J. Leonen, Second Division].

[49] *Kalalo v. Office of the Ombudsman*, 633 Phil. 160 (2010) [Per J. Peralta, Third Division].

[50] *Trinidad v. Office of the Ombudsman*, 564 Phil. 382, 388 (2007) [Per J. Carpio-Morales, En Banc].

[51] *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 101 (2015) [Per J. Perlas-Bernabe, First Division].

[52] Id.

Supreme Court E-Library

It only needs evidence showing "that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused."[53] In *Pilapil v. Sandiganbayan*,[54]

> Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[55]

To have a finding of probable cause, the prosecution only has to satisfy a low evidentiary threshold. In *Reynes v. Office of the Ombudsman (Visayas)*,[56] we characterized probable cause as a "matter [that] rests on likelihood rather than on certainty" and it merely "relies on common sense rather than on clear and convincing evidence."[57] If probable cause is satisfied, the complaint may be filed. Any questions on the parties' evidence should be raised during trial. *Estrada v. Office of the Ombudsman*[58] explained:

> The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well-founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation

---

[53] *Galario v. Office of the Ombudsman*, 554 Phil. 86, 101 (2007) [Per J. Chico-Nazario, Third Division].

[54] 293 Phil. 368 (1993) [Per J. Nocon, En Banc].

[55] *Id.* at 382.

[56] G.R. No. 223405, February 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65054> [Per J. Leonen, Third Division].

[57] Id.

[58] 751 Phil. 821 (2015) [Per J. Carpio, En Banc].

of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[59]

"A preliminary investigation is 'merely inquisitorial' and is only conducted to aid the prosecutor in preparing the information."[60] It is preparatory to a trial. "An accused's right to a preliminary investigation is purely statutory; it is not a right guaranteed by the Constitution. Hence, any alleged irregularity in an investigation's conduct does not render the information void nor impair its validity."[61]

II

The executive determination of probable cause is different from the judicial determination of probable cause. The Supreme Court has explained:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom [they believe] to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not [they have] made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon*.
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy [themselves] that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the

---

[59] Id. at 864.

[60] *De Lima v. Reyes*, 776 Phil. 623, 648 (2016) [Per J. Leonen, Second Division].

[61] Id.

Supreme Court E-Library

judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[62] (Emphasis in the original; citation omitted)

The determination of probable cause for the purpose of filing an information is a function within the exclusive sphere and competence of the Office of the Ombudsman. "The courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor."[63]

To assail the Office of the Ombudsman's determination of probable cause, an allegation of grave abuse of discretion must be substantiated. "Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical[,] or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law."[64]

"[I]n a special civil action for certiorari, this Court cannot correct errors of fact or law not amounting to grave abuse of discretion. This Court may review [the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, but only upon a clear showing that it abused its discretion in an 'arbitrary, capricious, whimsical, or despotic manner.'"[65]

To justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave and so patent as to amount to having acted without jurisdiction.[66] Petitioner bears

---

[62] Id. at 647.

[63] *People v. Castillo*, 607 Phil. 754, 765 (2009) [Per J. Quisumbing, Second Division].

[64] *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017) [Per J. Leonen, Second Division], citing *Tetangco v. Ombudsman*, 515 Phil. 230 (2006) [Per J. Quisumbing, Third Division].

[65] *Degamo v. Office of the Ombudsman*, G.R. No. 212416, December 5, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64805> [Per J. Leonen, Third Division].

[66] *Vergara v. Ombudsman*, 600 Phil. 26, 45 (2009) [Per J. Carpio, En Banc].

the burden to show not merely reversible error or mere abuse of discretion, but grave abuse of discretion.[67]

Mere disagreement with the factual findings of the Office of the Ombudsman is not tantamount to grave abuse of discretion. In *Binay v. Office of the Ombudsman*,[68] we held:

> Mere "disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion." It is necessary for the petitioner to prove "that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law."[69]

Subsequently, when an information is filed, the court acquires jurisdiction over the case and a judicial determination of probable cause is made by the judge for the purpose of issuing a warrant of arrest. At this stage, any motion to dismiss or determine the conviction or acquittal of the accused is within the sound discretion of the court.[70] In *Crespo v. Mogul*,[71] we explained:

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

---

[67] *Office of the Ombudsman v. Magno*, 592 Phil. 636 (2008) [Per J. Chico-Nazario, Third Division].

[68] G.R. Nos. 213957-58, August 7, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552> [Per J. Leonen, Third Division].

[69] Id.

[70] *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per J. Leonen, Second Division].

[71] 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

Supreme Court E-Library

was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[72]

Once probable cause has been judicially determined, questions on the executive determination of probable cause are rendered moot.[73] Moreover, motions for judicial determination of probable cause become superfluities because the rules already direct the judge to make a personal finding of probable cause.[74] Any error that requires a review of evidence should be addressed to the trial court.[75] In *Drilon v. Court of Appeals*:

> Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. It is means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[76]

Thus, a writ of certiorari cannot be issued because once probable cause has been judicially determined, a petition assailing the executive determination of probable cause is no longer the plain, speedy, and adequate remedy.

III

In this case, the Sandiganbayan has already judicially determined, independently of the finding of the Office of the

---

[72] Id. at 476.

[73] *De Lima v. Reyes*, 776 Phil. 623, 649 (2016) [Per J. Leonen, Second Division].

[74] *Leviste v. Alameda*, 640 Phil. 620 (2010) [Per J. Carpio-Morales, Third Division].

[75] *Drilon v. Court of Appeals*, 327 Phil. 916 (1996) [Per J. Romero, Second Division].

[76] Id. at 923.

Supreme Court E-Library

Ombudsman, that there is probable cause to proceed to trial. The present Petition has been rendered moot by the dismissal of petitioner's Motion for Judicial Determination of Probable Cause, the conduct of his arraignment, and the ongoing trial.

In the first place, petitioner's Motion is a superfluity because the Sandiganbayan is already mandated by law to evaluate the resolution of the Office of the Ombudsman together with the supporting evidence. The ongoing trial forecloses any questions on the Office of the Ombudsman's executive determination of probable cause.

Further, petitioner's participation in the ongoing trial is his plain, speedy, and adequate remedy. Should respondent render an adverse decision, his next recourse is to appeal.

In any case, the petition was correctly dismissed because there is no grave abuse of discretion on the part of respondent. It correctly affirmed the Office of the Ombudsman's finding of probable cause.

Petitioner's allegations essentially assail the Office of the Ombudsman's appreciation of evidence and factual findings, leading to the determination of probable cause. In his Motion for Reconsideration, petitioner repeats his claims, questioning the evidence used during the preliminary investigation and raising the degree of quantum of evidence required in insisting that there was a misappreciation of evidence.

However, the conduct of preliminary investigation is geared only to determine whether probable cause exists to hold petitioner for trial. Considering the lower quantum of evidence required in preliminary investigation, there is no grave abuse of discretion in the findings of respondent and the Office of the Ombudsman.

To reiterate, probable cause simply implies probability of guilt. It is based merely on opinion and reasonable belief. The preliminary investigation is not the proper venue to rule on petitioner's guilt. Probable cause is determined in a summary manner. The trial is precisely to allow a full assessment of petitioner's case. In this case, petitioner's arguments, which go into the elements of the

Supreme Court E-Library

criminal charge, are matters of evidence better subjected to the scrutiny after an extensive trial on the merits.

Nevertheless, even if this Motion for Reconsideration is resolved, there is no imputable grave abuse of discretion in the determination of the Office of the Ombudsman and respondent. The evidence on record engenders reasonable belief that petitioner may have committed the crime and that he should stand trial.

In his Motion for Reconsideration, petitioner reiterates his arguments, asserting that respondent grossly misappreciated the facts and evidence of the case. The *ponencia* ruled in his favor, concluding that the evidence proffered by the prosecution does not indeed show reasonable belief of guilt and that the element of conspiracy with a public officer was not established.[77] In particular, it found that respondent relied on mere implications of petitioner's ownership of the helicopters when the documentary evidence shows that Lion Air, Asian Spirit, and the Manila Aerospace Products Trading Corporation are their true owners.[78] Further, it ruled that there are no overt acts attributable to petitioner that proves that he conspired with any of the public officers.[79]

A careful review of the case would show that there is nothing capricious, whimsical, or even arbitrary in respondent's findings and conclusions and that the Office of the Ombudsman had sufficiently established probable cause for the filing of the Information against petitioner. The evidence gathered and relied upon by respondent evinces a reasonable belief that petitioner is involved in the transaction.

In its Resolution, respondent explained its findings and discussed how the documents on record result in a finding of probable cause. It found that the documents cited by petitioner did not conclusively show that Asian Spirit or Lion Air was the true owner of the helicopters before they were sold to the

---

[77] *Ponencia*, p. 14.

[78] Id. at 16.

[79] Id. at 14.

Supreme Court E-Library

Philippine National Police.[80] The Resolution was supported by the findings of the panel. In the Office of the Ombudsman Panel's Joint Resolution,[81] the panel found that there is evidence that Po, the owner of Asian Spirit and Lion Air, does not have complete control over the helicopters.

Respondent relied upon Po's allegation that petitioner instructed him to facilitate the purchase and sale of the helicopters and that he remitted the proceeds of the sale to petitioner. Moreover, it noted that petitioner and his family repeatedly used the helicopters and the Lion Air's flight dispatcher took instructions from petitioner as to the flight plan. It was convinced that these pieces of evidence were indicia of petitioner's ownership over the helicopters.[82]

Respondent also relied on Po's statements showing that petitioner instructed him to register the helicopters under the name of Asian Spirit only for tax purposes in 2003.[83] It also consider documents showing that petitioner has not totally divested himself of his interest in Lourdes T. Arroyo, Inc.

Respondent further found that the deed of assignment offered by petitioner to show that he had already assigned his shares in Lourdes T. Arroyo, Inc. is not an evidence of a valid transfer, except between him and the named assignee in the deed. The certification attached to the deed did not mention that the transfer was duly registered in the books of Lourdes T. Arroyo, Inc. Hence, insofar as third parties are concerned, there is no valid divestment of petitioner's interest in Lourdes T. Arroyo, Inc.[84] This is indication that petitioner benefitted from the anomalous sale.

Respondent also stressed that there is a stipulation in the deed that the supposed assignee was merely constituted as petitioner's proxy.[85] Section 4 of the deed reads:

---

[80] *Rollo*, p. 69.

[81] Id. at 719-720.

[82] Id. at 68-69.

[83] Id.

[84] Id. at 68.

[85] Id.

Supreme Court E-Library

Upon the signing of this Deed, the ASSIGNOR hereby appoints the ASSIGNEE as his duly constituted PROXY, with full power and authority to represent and vote the Subject Shares at any and all stockholder's meetings, or at any adjournment thereof, on all matters that may be brought before said meetings, including the election of directors, as fully to all intents and purposes as the ASSIGNOR might do it present and acting in person.[86]

This evinces a reasonable belief that petitioner still had an interest in Lourdes T. Arroyo, Inc.

With respect to the defense that the use of the helicopters is consistent with a fleet lease agreement, the Joint Resolution highlights questions on the agreement's authenticity, thus:

First, the lease agreement involved, among others, the helicopters sold to the PNP bearing serial numbers 1372 and 1374. Note that the lease agreement was notarized on March 16, 2004 and indicated the same day as the start of the lease period. However, the helicopters with serial numbers 1372 and 1374 only arrived in the Philippines on March 17, a day after the first day of the purported lease agreement.

Second, according to the testimony of Mr. Sia, he was simply asked to affix his signature, sometimes in the year 2005 or 2006, on the page containing his name. The entire lease document, drafted solely by the Arroyos, was not even given to him. This testimony supports this Committee's belief that the lease agreement does not reflect a true agreement.

. . . .

Lastly, it makes no sense for any party to enter into lease agreement which would end on May 15, 2004 and the same party would continue to pay the lessor for the maintenance and operating expenses amounting to ₱18,250,000.00 until 2011.[87]

The *ponencia* ruled that there is grave abuse of discretion because respondent and the Office of the Ombudsman gave weight to Lazo's hearsay statement over petitioner's documentary

---

[86] Id. at 945.

[87] Id. at 552.

Supreme Court E-Library

evidence.[88] During the Senate Blue Ribbon Committee hearing, Lazo claimed that he knew petitioner is the owner of the helicopters based on what Po said.

As already explained earlier, technical rules of evidence do not apply in a preliminary investigation proceeding. Hearsay evidence can be admitted in determining probable cause. In *Estrada v. Office of the Ombudsman*,[89]

> Thus, probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay. Hearsay evidence is admissible in determining probable cause in a preliminary investigation because such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties.[90]

Thus, Lazo's statement may be admitted for purposes of determining probable cause. In any case, Po himself testified and his statements were not mere hearsay but were based on his personal knowledge that petitioner is the owner of the helicopters. Moreover, respondent and the Office of the Ombudsman did not rely solely on these testimonies. They also considered several pieces of documentary evidence, such as the subsidiary ledger and the flight log report.

The *ponencia* concluded that there was no sufficient evidence establishing conspiracy and that equating Lourdes T. Arroyo, Inc.'s ownership to petitioner's ownership is a deviation from the principle of separate juridical entity.[91]

In *Reyes v. Ombudsman*,[92] this Court held that "[c]onspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design,

---

[88] *Ponencia*, p. 20.

[89] *Estrada v. Office of the Ombudsman*, 751 Phil. 821 (2015) [Per J. Carpio, En Banc].

[90] Id. at 874.

[91] *Ponencia*, p. 15.

[92] *Reyes v. Ombudsman*, 783 Phil. 304 (2016) [Per J. Perlas-Bernabe, En Banc].

Supreme Court E-Library

concerted action[,] and community of interests."[93] Thus, there is conspiracy when an accused is involved in the commission of the crime, regardless of the degree of participation.[94]

In establishing conspiracy, it is not necessary to show "direct proof of an agreement concerning the commission of a felony and the decision to commit[.]"[95] An accused's act of conspiring with their coaccused may be inferred from their acts before, during, or after the commission of the crime, which, in totality, would reveal a community of criminal design.[96]

In this case, there is reasonable belief that petitioner was involved in the anomalous sale as the owner of the helicopters.

There are pieces of evidence establishing that petitioner retained his financial interest in Lourdes T. Arroyo, Inc. and that he exercised acts of ownership over the helicopters. He instructed Po to register the helicopters under the name of Asian Spirit merely for tax purposes and he personally paid for the hangar fees, take-off and landing charges, expenses for maintenance, pilotage, gasoline, oil and lubricants, as well as fees for the renewal of the aircraft registration and certificate of airworthiness.[97] Petitioner continued to pay for the maintenance and operating fees until 2011, even if he claimed that he merely leased the helicopters until 2004.[98]

Moreover, there were indications that the negotiation committee of the National Police Commission intended to unduly favor petitioner in the purchase of the helicopters. The prosecution showed petitioner was able to dispose of the helicopters with the

---

[93] Id. at 351.

[94] Id.

[95] *Go v. Sandiganbayan*, 549 Phil. 783, 805 (2007) [Per J. Callejo, Sr., Third Division].

[96] Id.

[97] *Rollo*, pp. 721-722.

[98] Id. at 552.

Supreme Court E-Library

participation and cooperation of the officers and personnel of the Philippine National Police.[99]

In any event, this Court has ruled that questions on the lack of finding of conspiracy is an evidentiary matter, which should be resolved during trial on merits. In *Go v. Sandiganbayan*:

> It is well established that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. In the same manner, the absence (or presence) of any conspiracy among the accused is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.[100]

In the same vein, questions on the true ownership of the helicopters and the degree of involvement of petitioner through Lourdes T. Arroyo, Inc. in the sale are highly factual matters, which cannot be resolved at this stage.

In all, respondent and the Office of the Ombudsman discharged their duty by discussing the bases of their findings of probable cause against petitioner. The possible involvement of petitioner in the sale surfaced during the investigations, which raised questions and must be threshed out in a full-blown trial. Petitioner's counterarguments and controverting evidence do not completely rule out his participation in the sale. At this point, questions on the propriety of the determination of executive and judicial probable cause are moot. Petitioner's remedy is to present his evidence in the trial before respondent.

Allegations that respondent has misappreciated evident facts are not tantamount to jurisdictional error. To reiterate, "[m]ere 'disagreement with the Office of the Ombudsman's findings is not enough to constitute grave abuse discretion.'"[101] "The mere

---

[99] Id. at 66.

[100] *Go v. Sandiganbayan*, 549 Phil. 782, 804 (2007) [Per J. Callejo, Sr., Third Division]; See also *Ganaden v. Ombudsman*, 665 Phil. 224 (2011) [Per J. Villarama, Jr., Third Division].

[101] *Binay v. Office of the Ombudsman*, G.R. Nos. 213957-58, August 7, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65552> [Per J. Leonen, Third Division].

Supreme Court E-Library

exercise of prosecutorial discretion, when done within the bounds of law and the rules of procedure, should not be subject to this Court's review."[102]

There being no clear showing that respondent and the Office of the Ombudsman acted with grave abuse of discretion, this Court should not interfere with their findings of probable cause.

ACCORDINGLY, I vote to **DENY** the Motion for Reconsideration.

---

[102] *Non v. Office of the Ombudsman*, G.R. No. 239168, September 15, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67097> [Per J. Reyes, Jr., En Banc].