



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

MARY ANN D. DOMINGO,
Petitioner,

G.R. No. 257136

Present:

- versus -

CAGUIOA, J., *Chairperson,*
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

OFFICE OF THE DEPUTY
 OMBUDSMAN FOR MILITARY
 AND OTHER LAW
 ENFORCEMENT OFFICES
 (MOLEO), PLT. COL. ALI JOSE A.
 DUTERTE, PMAJ. JONATHAN
 VICTOR M. OLVEÑA, PMAJ.
 TIMOTHY B. ANIWAY, JR., PSSG
 REYMEL A. VILLANUEVA, PSSG
 JOHN CEZAR S. MENDOZA,
 PSMS JOEL J. SALUDES, PSSG
 HAROLD JAKE A. DELA ROSA,
 PCPL. ARNEL DE GUZMAN,
 PCPL. JOHNSTON ALACRE,
 PMSG. VIRGILIO CERVANTES,
 PCPL. ARTEMIO SAGUROS, JR.,
 PAT. CARLO MIGUEL DANIEL,
 PAT. RANDY CHUA, PAT. RUBY
 DUMAGUING, PSMS. ALBERTO
 SUCGANG, PSSG. RICHARD
 RAMOS, PCPL. ORLAND LUCKY
 BOY DE LEON, PMAJ. AVELINO
 U. ANDAYA, PSSG. EDGAR L.
 MANAPAT, PAT. ALDRIN
 MATTHEW A. MATINING,
 HARLEM RAMOS,

Respondents.

Promulgated:

October 11, 2023

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DECISION**INTING, J.:**

This resolves the Petition¹ for *Certiorari* under Rule 65 of the Rules of Court filed by Mary Ann D. Domingo (petitioner) assailing the Joint Resolution² dated January 15, 2020, of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Office (OMB-MOLEO) in OMB-P-C-17-0149 and OMB-P-A-17-0160 that: *First*, found probable cause that respondents Police Master Sergeant Virgilio Q. Cervantes (Cervantes), Police Corporal (P/Cpl.) Arnel C. De Guzman (De Guzman), P/Cpl. Johnston M. Alacre (Alacre), and P/Cpl. Artemio S. Saguros, Jr. (Saguros, Jr.) (accused-respondents) committed the crime of homicide; and *Second*, exonerated the following respondents from any criminal liability: Police Lieutenant Colonel Ali Jose A. Duterte (Duterte), Police Captain Jonathan Victor M. Olveña (Olveña), Police Major (P/Maj.) Timothy B. Aniway, Jr. (Aniway, Jr.), Police Staff Sergeant (P/SSgt.) Reymel A. Villanueva (Villanueva), P/SSgt. John Cezar S. Mendoza (Mendoza), Police Senior Master Sergeant (P/SMSgt.) Joel J. Saludes (Saludes), P/SSgt. Harold Jake A. Dela Rosa (Dela Rosa), Patrolman Carlo Miguel L. Daniel (Daniel), Patrolman (Pat.) Randy M. Chua (Chua), Patrolwoman Ruby A. Dumaguing (Dumaguing), P/SMSgt. Alberto R. Sucgang (Sucgang), P/SSgt. Richard Y. Ramos (Ramos), P/Cpl. Orland Lucky Boy O. De Leon (De Leon), P/Maj. Avelino U. Andaya (Andaya), P/SSgt. Edgar L. Manapat (Manapat), Pat. Aldrin Matthew A. Matining (Matining), and Harlem Ramos (Harlem) (exonerated-respondents) (collectively, respondents).

Likewise assailed is the OMB-MOLEO's Joint Order³ dated March 8, 2021, denying petitioner's motion for reconsideration.

¹ *Rollo*, pp. 3-29.

² *Id.* at 34-53. Penned by Graft Investigation and Prosecution Officer Benedict Byron C. Villalba and concurred in by Acting Director Yvette Marie S. Evaristo. Approved by Cyril E. Ramos, Deputy Ombudsman for the Military and Other Law Enforcement Offices, on September 22, 2020.

³ *Id.* at 54-64. Penned by Graft Investigation and Prosecution Officer Benedict Byron C. Villalba and concurred in by Acting Director Yvette Marie S. Evaristo. Approved by Cyril E. Ramos, Deputy Ombudsman for the Military and Other Law Enforcement Offices, on March 26, 2021.

The Antecedents

The case stemmed from a shooting incident in the early hours of September 15, 2016, that resulted in the death of petitioner's husband, Luis Bonifacio (Luis), and their son, Gabriel Lois Bonifacio (Gabriel).⁴

Version of the Complainant

Petitioner narrated the events that culminated in her husband's and son's deaths as follows:

On the night of September 14, 2016, petitioner, Luis, and their three minor children, were resting and about to sleep on the second floor of the house located at 86 Masikap Street, *Barangay Barrio*, Caloocan City. Thereafter, at around 12:30 a.m. on September 15, 2016, Gabriel knocked on their door and was let into the house by Maria Kaila Bonifacio (Maria Kaila), their eldest daughter, who was then sitting on the stairs and whiling the time away on Facebook.⁵ According to Maria Kaila, her elder brother told her that he was accepted as a regular worker at his catering job before proceeding upstairs. Thereafter, she walked towards the right alley corner outside their house to get a better reception. After a few minutes, an agitated and anxious Harlem, a family friend, passed by and asked her if her father was at home and asleep. Upon learning from Maria Kaila that Luis was asleep, Harlem abruptly left and ran away.⁶

Suddenly, a group of armed police officers, wearing police vests and carrying flashlights, barged into their house and proceeded to the second floor. They yelled "[m]ga pulis kami" and "[s]earching lang po." Petitioner and her children were forced to go downstairs as the armed men pointed their guns. When petitioner looked back, she saw her husband on his knees with guns pointed at his head while their son, Gabriel, was pulling at the police surrounding his father, pleading: "*Sir wag po. Bakit po? Papa ko yan. Ano bang kasalanan namin? Wala kaming ginagawang masama.*"⁷

⁴ *Id.* at 36-37.

⁵ *Id.* at 8-9.

⁶ *Id.* at 9.

⁷ *Id.* at 9-10.

Petitioner was frenziedly grabbing Maria Kaila, who was inside a police van, when she heard several gunshots coming from their house. Thus, petitioner and Maria Kaila ran to the nearest *barangay* hall and community precinct to ask for help, but they were told that neither the *barangay* nor the on-duty policemen could intervene because it was a police operation conducted by a separate unit. When petitioner was about to go back to their house, she was barred by a police officer from entering due to the shooting encounter that just occurred.⁸

While at her friend's house in the next *barangay*, petitioner was informed by her friend's daughter of a Facebook post which stated that two men, probably father and son, were brought to the Manila Central University-FTDF (MCU) Hospital. Hence, petitioner and Maria Kaila ran back to their house where they were informed by a police officer that Luis was dead but Gabriel was alive, and that both were taken to the nearest hospital.⁹

At the hospital, Maria Kaila spotted Gabriel's body on a gurney and a nurse informed Maria Kaila that her father and brother were both dead. After a few minutes, petitioner then arrived at the hospital. Thereafter, two men who were earlier present at their house, introduced themselves as police Scene of the Crime Operatives and asked petitioner for the names of the two deceased, supposedly to bring the bodies to Camp Crame for autopsy. Petitioner, however, refused to turn over their bodies as she was afraid of the two men. After an argument, the hospital eventually released the bodies to the family and San Martin de Porres, their funeral parlor of choice.¹⁰

Around 4:00 a.m. of the same day, one of petitioner's daughters saw that there was no longer any yellow caution tape surrounding their house and the stairs leading to the second floor were covered with blood. Thereafter, said daughter, together with petitioner's friend and some of their neighbors, retrieved spent shells and bullets from the floor as well as empty transparent plastic sachets, soiled plastic bags from 7-Eleven, coffee cups, and food receptacles.¹¹

⁸ *Id.* at 10.

⁹ *Id.*

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 11.

When petitioner, Maria Kaila, and their other family members returned to the house past 7:00 a.m., they discovered that Luis' wallet, Gabriel's bracelet, watch, clothes, cellular phone, and charger, and Maria Kaila's uniform were all missing.¹²

Petitioner vehemently denied that Luis, who once served as a *barangay tanod*, and Gabriel, a waiter, were involved in the drug trade. She alleged that: (1) one Randy Rusia told her children that the police officers dragged the body of Gabriel to the streets and thereafter, shook a drum while shouting "*nanlalaban!*" before firing a gun; (2) the incident was not a buy-bust operation but a "raid," "*sona*" or "*tokhang*" which was conducted by more than 20 uniformed police officers and that 15 of them entered their house; (3) it was impossible for Luis and Gabriel to attack the police officers as they were unarmed and outnumbered; (4) the person named in the Memorandum dated September 15, 2016 with the subject "Report on Shooting Encounter in a Joint Operation of [District Special Operations Unit (DSOU)] and [District Anti-Illegal Drugs (DAID)] against suspects LUISITO BONIFACIO and GABRIEL BONIFACIO"¹³ (Incident Report) was Luis' brother, Luisito; and (5) Harlem was the police officer's confidential informant mentioned in the Incident Report.¹⁴

On March 14, 2017, petitioner filed a complaint-affidavit¹⁵ with the Ombudsman against Duterte, Saludes, Mendoza, Manapat, Matining, Andaya, Dela Rosa, Villanueva, Harlem, and "John" and "Jane Does," who took part in the operation. She alleged that they committed robbery, two counts of murder, and were guilty of gross misconduct, grave abuse of authority, gross oppression, and conduct unbecoming of a public officer in relation to the deaths of Luis and Gabriel. Aside from her complaint-affidavit, petitioner submitted the following documents to the Ombudsman:

1. MCU Hospital Death Protocol on Luis;¹⁶
2. MCU Hospital Death Protocol on Gabriel;¹⁷
3. Luis' death certificate;¹⁸

¹² *Id.*

¹³ *Id.* at 93.

¹⁴ *Id.* at 71-72.

¹⁵ *Id.* at 67-73.

¹⁶ *Id.* at 76.

¹⁷ *Id.* at 77.

¹⁸ *Id.* at 78.

4. Gabriel's death certificate;¹⁹
5. Photographs of Gabriel's cadaver;²⁰
6. Photographs of Luis' cadaver;²¹
7. Photograph of the second floor of the house where the shooting took place;²²
8. Voter's ID of Luis;²³
9. Gabriel's various IDs, including his employee ID;²⁴
10. Gabriel's photograph at work;²⁵
11. Incident Report;²⁶
12. Birth certificate of Luis' brother named Luisito;²⁷ and
13. Maria Kaila's Affidavit dated March 13, 2017.²⁸

On October 23, 2017, petitioner filed a supplemental complaint-affidavit²⁹ impleading Aniway, Jr., Olveña, Cervantes, De Guzman, Alacre, Saguros, Jr., Sugang, Ramos, De Leon, Daniel, Chua, and Dumaguang as additional respondents.³⁰

Version of the Respondents

Respondents Manapat and Matining denied the allegations against them in their Joint Counter-Affidavit dated June 21, 2017. They contended that on September 15, 2016, they were informed of a shooting incident in G. De Jesus Street, Bagong Barrio, Caloocan City, and based on the said information, they proceeded to the scene to investigate. They stressed that as Investigators-On-Case, they were at the scene of the shooting incident only after it occurred for the purpose of gathering data. To bolster their defense, they offered a certified true copy of the Station Tactical Operation Center (STOC) Dispatch Entries of September 15, 2016, and the Sworn Affidavit³¹ of Police Officer 1 Marjorie R. Martin, the Duty Radio Control Operator of the STOC.³²

¹⁹ *Id.* at 79.

²⁰ *Id.* at 80–82.

²¹ *Id.* at 83–84.

²² *Id.* at 85–89.

²³ *Id.* at 90.

²⁴ *Id.* at 91.

²⁵ *Id.* at 92.

²⁶ *Id.* at 93.

²⁷ *Id.* at 94.

²⁸ *Id.* at 95–97.

²⁹ *Id.* at 105–114.

³⁰ *Id.* at 102.

³¹ *Id.* at 298.

³² *Id.* at 39–40.

For his part, Aniway, Jr. denied any participation and involvement regarding the buy-bust operation conducted by the joint operatives of the DSOU and DAID Drugs Special Operations Task Group (DAID-SOTG) as shown by the Pre-Operation Report³³ and Coordination Sheet³⁴ submitted to the Philippine Drug Enforcement Agency-Regional Office National Capital Region. He asserted that he was merely the Deputy Chief of the DAID-SOTG at that time, nothing more.³⁵

Accused-respondents, Duterte, Olveña, Sucgang, Saludes, Mendoza, Villanueva, Dela Rosa, Ramos, Chua, Daniel, and Dumaguing, jointly denied the allegations against them³⁶ and narrated the events as follows:

On September 15, 2016, the combined teams from the DAID-SOTG led by Olveña, and the DSOU led by Sucgang, conducted a buy-bust operation against Luis.³⁷

Prior to the operation, Duterte, the DSOU Chief and Ground Commander, established a makeshift command post beside the *barangay* hall where he monitored the turn of events. He was later joined by Villanueva and Dela Rosa who were both tasked as investigators. Meanwhile, Olveña, the DAID-SOTG Team Leader, took charge of the perimeter security with Sucgang, Ramos, Chua, Daniel, and Dumaguing.³⁸

The informant introduced Saludes and Mendoza, who acted as *poseur*-buyers, to Luis. However, Gabriel recognized the informant as a police asset, so he alerted Luis and the two ran up to their house, took their firearms, and fired towards the police operatives who sought cover at a nearby wall as they were unarmed. At that point, accused-respondents, the back-up officers, announced that they are police officers and ordered a ceasefire. Their call, however, went unheeded, and thus, they had no other option but to use reasonable force to repel the attack and defend themselves. Consequently, Luis and Gabriel sustained gunshot wounds

³³ *Id.* at 243.

³⁴ *Id.* at 244.

³⁵ *Id.* at 240–241.

³⁶ *Id.* at 41.

³⁷ *Id.*

³⁸ *Id.* at 42.

and were rushed to the MCU Hospital but were declared dead several minutes after admission.³⁹

They asserted that the testimony of petitioner and Maria Kaila are bare, self-serving, and hearsay because they have no personal knowledge of the incident which led to the death of Luis and Gabriel. Anent the charge of robbery, they alleged that petitioner lied to malign their reputation and integrity as officers of the law. Lastly, they denied petitioner's allegation that the real target of their police operation was Luisito, Luis' brother, and contended that a scrutiny of the Pre-Operation Report and the Drug Watch List of Caloocan City consistently pointed to one Luis Bonifacio as among those involved in the drug trade in *Barangay* 146, Caloocan City.⁴⁰

Meanwhile, respondents De Leon and Harlem failed to file any responsive pleadings.⁴¹

The OMB-MOLEO's Ruling

In the Joint Resolution⁴² dated January 15, 2020, the OMB-MOLEO dismissed the complaints for murder and robbery against respondents, but found probable cause to charge accused-respondents with two counts of homicide:

WHEREFORE, the charges of violation of Articles 248 and 293 of the Revised Penal Code [] against ALL respondents are DISMISSED.

Finding probable cause for two (2) counts of Violation of Article 249 of the RPC against respondents P/MSGT. VIRGILIO Q. CERVANTES, P/CPL. ARNEL C. DE GUZMAN, P/CPL. JOHNSTON M. ALACRE, and P/CPL. ARTEMIO S. SAGUROS, JR., let the attached Information be FILED in court.

In addition, P/MSGT. VIRGILIO Q. CERVANTES, P/CPL. ARNEL C. DE GUZMAN, P/CPL. JOHNSTON M. ALACRE, and P/CPL. ARTEMIO S. SAGUROS, JR. are found GUILTY of GRAVE MISCONDUCT and meted the penalty of ONE (1) YEAR SUSPENSION from the service WITHOUT PAY.

³⁹ *Id.*

⁴⁰ *Id.* at 41-43.

⁴¹ *Id.* at 43.

⁴² *Id.* at 34-53.

If the penalty of one (1) year suspension from service without pay cannot be served by reason of separation from the service, the alternative penalty of FINE in the amount equivalent to their respective SALARY for SIX (6) MONTHS, shall be imposed, payable to the Office of the Ombudsman, and may be deducted from their respective retirement benefits, accrued leave credits or any receivable from their office.

Furthermore, P/MAJ. AVELINO U. ANDAYA, P/SSGT. EDGAR L. MANAPAT, P/SSGT. REYMEL A. VILLANUEVA, P/SSGT. HAROLD JAKE A. DELA ROSA and PAT. ALDRIN MATTHEW A. MATINING are found guilty of SIMPLE NEGLECT OF DUTY and meted the penalty of ONE (1) MONTH SUSPENSION from the service WITHOUT PAY.

If the penalty of suspension cannot be served by reason of separation from the service, the alternative penalty of FINE in the amount equivalent to their respective SALARY for ONE (1) MONTH, shall be imposed payable to the Office of the Ombudsman, and may be deducted from their respective retirement benefits, accrued leave credits or any receivable from their office.

Lastly, administrative complaints against P/LT. COL. ALI JOSE A. DUTERTE, P/MAJ. TIMOTHY B. ANIWAY, JR., P/CPT. JONATHAN VICTOR M. OLVEÑA, P/SMSGT. ALBERTO R. SUCGANG, P/SMSGT. JOEL J. SALUDES, P/SSGT. JOHN CEZAR S. MENDOZA, P/SSGT. RICHARD Y. RAMOS, P/SSGT. ORLAND LUCKY BOY O. DE LEON, PAT. RANDY M. CHUA, PAT. CARLO MIGUEL L. DANIEL, and PAT. RUBY A. DUMAGUING are DISMISSED.

Let the Honorable Secretary of the Department of the Interior and Local Government (DILG), and the Chief, PNP, be furnished copies of this Joint Resolution for implementation.

SO ORDERED.⁴³ (Emphasis omitted)

At the outset, the OMB-MOLEO held that the criminal complaint against Andaya, Manapat, and Matining, should be dismissed outright as they were not part of the buy-bust operation and there was no clear and convincing evidence showing that they fabricated evidence.⁴⁴ It further held that the criminal complaint against Duterte, Aniway, Olveña, Sucgang, Saludes, Villanueva, Ramos, De Leon, Chua, Daniel,

⁴³ *Id.* at 49–50.

⁴⁴ *Id.* at 44.

Dumaguing, and Harlem, should likewise be dismissed as the records were bereft of any details as to the acts imputed to them.⁴⁵

Anent the allegations against accused-respondents, the OMB-MOLEO pointed out that they admitted to shooting at Luis and Gabriel albeit they alleged that they were defending themselves. However, the OMB-MOLEO found that they failed to corroborate their claim of self-defense with convincing evidence: *First*, there were no slug marks in the surrounding area of the alleged shootout, particularly from the vicinity where the police officers took cover; and *Second*, the multiple gunshot wounds sustained by both Luis and Gabriel negated accused-respondents' claim of self-defense and indicated a determined effort on their part to kill and not just defend themselves.⁴⁶

Nonetheless, the OMB-MOLEO did not find probable cause to indict accused-respondents with murder. It held that the records are bereft of evidence that would establish evident premeditation as there is no showing that the buy-bust operation was conceived for the purpose of killing Luis and Gabriel. It further held that treachery was not present as there was no showing that the attack was made swiftly, deliberately, unexpectedly, and without a warning, thus affording the unsuspecting victims no chance to resist or escape the attack. Thus, it opined that accused-respondents are probably guilty of simple homicide only.⁴⁷

Hence, petitioner filed this petition.

Petitioner's Arguments

Petitioner submits that the OMB-MOLEO acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it (1) ruled that there is probable cause that the crime of homicide was committed in the killings of her husband and son, instead of murder, despite the presence of the qualifying circumstances of treachery and abuse of superior strength and (2) absolved exonerated-respondents from any criminal liability.⁴⁸ She contends that the number of police operatives who conducted the police operation in question shows the sheer imbalance of

⁴⁵ *Id.*

⁴⁶ *Id.* at 45-46.

⁴⁷ *Id.* at 46.

⁴⁸ *Id.* at 13.

strength between the armed police officers and the deceased, Luis, and Gabriel, who were unarmed and caught unaware during the incident. She added that Luis was thin while Gabriel had average built, and thus, they were in no position to fight back against the police officers.⁴⁹

Petitioner further contends that the killings were attended by treachery because at the time of the attack, the victims were not in a position to defend themselves. She posits that respondents consciously and deliberately adopted the particular means, methods, or forms of attack employed. She emphasized that the fact that the killings occurred in the middle of a police operation is, on its own, indicative that the police took advantage of their position and power in order to ensure that they can get away with it.⁵⁰ Petitioner maintains that she and her children are crucial eyewitnesses to the incident, and thus, their testimony should have been considered by the OMB-MOLEO in determining the presence of qualifying circumstances.⁵¹

Furthermore, petitioner maintains that the OMB-MOLEO erred in not finding conspiracy in the acts of all the respondents. She pointed out that they performed command and security roles in the police operation and were investigators on the case and of the crime scene⁵² and that their acts, taken as a whole, ensured the commission of the crime of murder, and afforded impunity to accused-respondents as shown by the Certificate of Commendation given to 17 of them.⁵³

Lastly, petitioner asked the Court to issue a temporary restraining order and/or preliminary injunction enjoining the OMB-MOLEO and the Office of the Caloocan City Prosecutor from proceeding with the filing of an Information relative to the death of Luis and Gabriel as it will prejudice her position that the charges should be qualified to murder.⁵⁴

⁴⁹ *Id.* at 14–15.

⁵⁰ *Id.* at 16.

⁵¹ *Id.*

⁵² *Id.* at 18.

⁵³ *Id.* at 24.

⁵⁴ *Id.* at 24–25.

Proceedings before the Court

On September 13, 2021, the Court required respondents to comment on both the petition and the prayer for the issuance of temporary restraining order within ten (10) days from notice.⁵⁵

In its Manifestation (in lieu Comment)⁵⁶ dated October 29, 2021, the OMB-MOLEO, through the Office of the Legal Affairs of the Office of the Ombudsman, stated that as an anti-corruption agency, it is in no position to interpose defenses on behalf of respondents, and thus, manifests that it be excused from participating in the proceedings.

Petitioner likewise filed a Manifestation with Motion to Resolve (Prayer for the Issuance of Temporary Restraining Order and/or Preliminary Injunction)⁵⁷ stating that the Informations for Homicide were filed before the Branch 121, Regional Trial Court (RTC), Caloocan City and docketed as Criminal Case Nos. C-117241-42; and that she completed her testimony on March 21, 2022. Thus, she prays that a temporary restraining order and/or preliminary injunction be issued against the RTC proceedings.

In the Resolution⁵⁸ dated September 12, 2022, the Court noted their respective manifestations and resolved to dispense with the filing of comments by the Ombudsman and the Office of the Solicitor General.

Meanwhile, the rest of the respondents still failed to file their respective comments on the petition as required in the Resolution dated September 13, 2021. Thus, on July 17, 2023, the Court resolved to dispense with respondents' comments.

Issues

The issues for the Court's resolution are whether the OMB-MOLEO gravely abused its discretion when it (1) found probable cause that the crime committed in the case was homicide instead of murder; and (2) absolved exonerated-respondents from any criminal liability.

⁵⁵ *Id.* at 300.

⁵⁶ *Id.* at 301-305.

⁵⁷ *Id.* at 311-315.

⁵⁸ *Id.* at 320-321.

The Court's Ruling

The petition is bereft of merit.

Under Section 13(1), Article XI of the Constitution and Section 15(1) of The Ombudsman Act of 1989,⁵⁹ the Ombudsman is granted with the power to investigate and prosecute illegal acts or omission of any public officer and has primary jurisdiction over cases cognizable by the Sandiganbayan.⁶⁰ In these cases, the graft investigation and prosecution officers of the Ombudsman hold the same function as the public prosecutors of the Department of Justice. In the same vein, the Ombudsman has the discretion to determine the question of whether probable cause exists that a crime or offense has been committed by a public officer, and what and whom to charge.⁶¹

In *Baltazar v. People*,⁶² the Court held that “[a] finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and that it was committed by the accused.”⁶³

As a rule, the Court does not interfere with the Ombudsman’s authority to determine the presence or absence of probable cause. This is consistent with the rule on judicial non-interference with respect to the investigatory and prosecutorial powers of the Ombudsman as it is an executive function and therefore, generally lies beyond the scope of judicial scrutiny.⁶⁴

The rationale behind this rule is elucidated in the case of *Chua v. Padillo*:⁶⁵

Having been vested by law with the control of the prosecution of criminal cases, the public prosecutor, in the exercise of his functions, has the power and discretion to: (a) determine whether a *prima facie*

⁵⁹ Approved on November 17, 1989.

⁶⁰ See *Pasok, Jr. v. Office of the Ombudsman-Mindanao*, 832 Phil. 719, 729 (2018).

⁶¹ See *Reynes v. Office of the Ombudsman (Visayas)*, 847 Phil. 847 (2019). See also *Senator Estrada v. Office of the Ombudsman*, 837 Phil. 913, 966 (2018).

⁶² 582 Phil. 275 (2008).

⁶³ *Id.* at 290.

⁶⁴ See *Pasok, Jr. v. Office of the Ombudsman-Mindanao*, *supra* note 60, at 727–728; *Dimayuga v. Office of the Ombudsman*, 528 Phil. 42 (2006); *Kara-an v. Ombudsman*, 476 Phil. 536, 548–550 (2004); *Camanag v. Guerrero*, 335 Phil. 945, 969–970 (1997); and *Alba v. Hon. Nitorreda*, 325 Phil. 229, 243–244 (1996).

⁶⁵ 550 Phil. 241 (2007).

case exists; (b) decide which of the conflicting testimonies should be believed free from the interference or control of the offended party; and (c) subject only to the right against self-incrimination, determine which witnesses to present in court. Given his discretionary powers, *a public prosecutor cannot be compelled to file an Information where he is not convinced that the evidence before him would warrant the filing of an action in court. For while he is bound by his oath of office to prosecute persons who, according to complainant's evidence, are shown to be guilty of a crime, he is likewise duty-bound to protect innocent persons from groundless, false, or malicious prosecution.*⁶⁶ (Citations omitted; emphasis supplied)

Thus, a graft investigation and prosecution officer of the Ombudsman, by the nature of his or her office, "is under no compulsion to file a particular criminal information where he or she is not convinced that he or she has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion."⁶⁷

As an exception to this rule, however, the Ombudsman's determination of probable cause may be modified or overturned upon showing that it was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.⁶⁸

In *Pasok, Jr. v. Office of the Ombudsman-Mindanao*,⁶⁹ the Court stressed that the Court's inquiry in *certiorari* proceedings involving the Ombudsman's finding of probable cause is limited to determining whether the latter acted with grave abuse of discretion:

The Court has always adhered to the general rule upholding the non-interference by the courts in the exercise by the Office of the Ombudsman of its plenary investigative and prosecutorial powers. In *certiorari* proceedings under Rule 65, the Court's inquiry is limited to determining whether the Office of the Ombudsman acted without or in excess of its jurisdiction, or with grave abuse of discretion.

There is grave abuse of discretion when an act of a court or tribunal is whimsical, arbitrary, or capricious as to amount to an "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility." Grave abuse of discretion was found in cases where a

⁶⁶ *Id.* at 248.

⁶⁷ *People v. Hon. Fineda*, 127 Phil. 150, 156-157 (1967).

⁶⁸ See *Pasok, Jr. v. Office of the Ombudsman-Mindanao*, *supra* note 60.

⁶⁹ *Id.*

lower court or tribunal violates or contravenes the Constitution, the law, or existing jurisprudence.⁷⁰

In other words, it is not enough for petitioner to show that the OMB-MOLEO erred in its determination of probable cause—she must convince the Court that the OMB-MOLEO exercised its investigatory and prosecutorial powers “in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and gross as to amount evasion”⁷¹ of its duty as the prosecutorial arm of the government against erring public officers.

The OMB-MOLEO did not act with grave abuse of discretion when it found that no probable cause exists that the killings of Luis and Gabriel were qualified by treachery, evident premeditation, and abuse of superior strength.

In order to arrive at probable cause, there must be *prima facie* evidence that the following elements of the crime of murder are present: “(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the [Revised Penal Code;] and (4) that the killing is not parricide or infanticide.”⁷²

Here, it is undisputed that Gabriel and Luis were killed during a police operation although petitioner contends that it was a “raid,” “*sona*” or “*tokhang*”—not a buy-bust operation as alleged by the police officers involved. However, by invoking the justifying circumstance of self-defense, accused-respondents effectively admitted being the ones who inflicted the gunshot wounds on the deceased.

After a careful perusal of Maria Kaila’s affidavit and petitioner’s affidavits respectively dated March 14, 2017, and October 23, 2017, petitioner failed to show sufficient and convincing reason for the Court to

⁷⁰ *Id.* at 727-728. Citations omitted.

⁷¹ *Tetangco v. Ombudsman*, 515 Phil. 230, 234 (2006).

⁷² *People v. Villanueva*, 807 Phil. 245, 252 (2017).

deviate from the rule on judicial non-interference with respect to the OMB-MOLEO's finding of probable cause.

At the outset, the Court notes that petitioner is confounding the qualifying circumstances of evident premeditation and treachery. The requisites of treachery are: "(1) employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) deliberate or conscious adoption of such means, method, or manner of execution."⁷³ Meanwhile, the requisites of evident premeditation are: "(1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act."⁷⁴

Here, the police operation carries with it the presumption of regularity in the performance of official duty or functions. Notably, however, the OMB-MOLEO failed to consider the justifying circumstance of fulfillment of a duty or lawful exercise of a right or office in its Joint Resolution dated January 15, 2020.

Nonetheless, absent any clear and convincing evidence that the police operation was conceived to kill the unsuspecting deceased, petitioner's contention that the killings were attended by evident premeditation is totally bereft of merit. The mere fact that the killings were committed by police officers during a planned police operation does not by itself constitute *prima facie* evidence of evident premeditation.

As to the qualifying circumstance of treachery, the Court had the opportunity to expound on the essence thereof in *People v. Carpio*:⁷⁵

There is treachery when a victim is set upon by the accused without warning, as when the accused attacks the victim from behind, or when the attack is sudden and unexpected and without the slightest provocation on the part of the victim, or is, in any event, so sudden and unexpected that the victim is unable to defend himself, thus insuring the execution of the criminal act without risk to the assailant.

⁷³ *People v. Pirame*, 384 Phil. 286, 301 (2000).

⁷⁴ *People v. Abadies*, 436 Phil. 98, 105-106 (2002).

⁷⁵ 346 Phil. 703 (1997).

In the case at bar, accused-appellant's attack was so sudden and launched from behind that the victim and his companions were caught off guard, without giving them any opportunity to defend themselves. The attack was swift, deliberate and unexpected. This is of the very essence of treachery.⁷⁶ (Citations omitted; underscoring supplied)

Here, petitioner admitted that the police officers who entered their house declared their purpose and introduced themselves as police officers. They wore police vests with weapons readily visible and pointed at their family members. Evidently, it cannot be said that accused-respondents' act of using their firearms was sudden and unexpected.

More, petitioner admitted that she saw Gabriel pulling at the police officers surrounding his father pleading: "*Sir wag po. Bakit po? Papa ko yan. Ano bang kasalanan namin? Wala kaming ginagawang masama.*"⁷⁷ Assuming *arguendo* that petitioner's version of events is true, accused-respondents' decision to shoot Luis and Gabriel may have been made at a spur of the moment brought about by Gabriel's attempt to obstruct his father's arrest.

In *Cirera v. People*,⁷⁸ the Court held that there is no treachery if the means adopted was not the result of a determination to ensure success in committing the crime such as when the attack was a reaction to an actual or imagined provocation on the part of the deceased.⁷⁹ In the same vein, a spur of the moment reaction likewise negates the presence of the qualifying circumstance of evident premeditation.

Lastly, as found by the OMB-MOLEO, petitioner admitted that she and Maria Kaila did not witness the shooting incident. Thus, petitioner's contention that what was conducted by respondents was a raid, "*sona*," or "*tokhang*"—not a buy-bust operation—and such means, manner and method were deliberately and consciously adopted by respondents to kill Luis and Gabriel is a mere opinion. To stress, the qualifying circumstance of treachery cannot be inferred from a mere opinion, presumption, or speculation.⁸⁰

⁷⁶ *Id.* at 716–717.

⁷⁷ *Rollo*, pp. 9–10.

⁷⁸ 739 Phil. 25 (2014).

⁷⁹ *Id.* at 45.

⁸⁰ See *People v. Dela Cruz*, 390 Phil. 961, 986 (2000).

Anent the qualifying circumstance of abuse of superior strength, the Court likewise finds that the OMB-MOLEO did not act with grave abuse of discretion when it found no probable cause that the killings in the case were attended by this qualifying circumstance.

“There are no fixed and invariable rules regarding abuse of superior strength.”⁸¹ That the assailants’ number is more than the deceased or that the assailants were armed while the deceased was unarmed do not *per se* establish that the crime was qualified with abuse of superior strength.⁸² In appreciating the qualifying circumstance of abuse of superior strength, the case of *People v. Lobrigas*⁸³ is instructive:

x x x. To appreciate abuse of superior strength, there must be a *deliberate intent on the part of the malefactors to take advantage of their greater number. They must have notoriously selected and made use of superior strength in the commission of the crime. To take advantage of superior strength is to use excessive force that is out of proportion to the means for self-defense available to the person attacked; thus, the prosecution must clearly show the offenders’ deliberate intent to do so.*⁸⁴ (Emphasis supplied)

Stated differently, abuse of superior strength is present whenever there is a notorious inequality of forces between the deceased and the assailant/s that is plainly and obviously advantageous to the assailant/s and purposely selected or taken advantage of *to facilitate the commission of the crime.*⁸⁵

From the foregoing, the Court rules that the purpose and context behind the assailant/s’ superior strength should be taken into consideration in the appreciation of the qualifying circumstance of *abuse* of superior strength.

Here, there is a reasonable explanation and justification as to why the police officers in the case were armed and why their number was superior to the deceased. *First*, they are required to have their service

⁸¹ *People v. Loreto*, 446 Phil. 592, 611 (2003).

⁸² See *People v. Villanueva*, *supra* note 72, at 255.

⁸³ 442 Phil. 382 (2002).

⁸⁴ *Id.* at 393.

⁸⁵ See *People v. Villanueva*, *supra* note 72, at 254, citing *Valenzuela v. People*, 612 Phil. 907, 917 (2009).

firearms on their persons while they are on duty,⁸⁶ more so when they are conducting a police operation where their lives are at risk; and *Second*, their superior number in relation to their target is practical for it would deter most people from resisting with violence. Thus, the qualifying circumstance of abuse of superior strength cannot be appreciated in the case *solely* on the ground that accused-respondents used firearms and had superior number as it is inherent in every planned police operation. Evidently, the OMB-MOLEO did not act with grave abuse of discretion in not appreciating the qualifying circumstance of abuse of superior strength in the present case absent any clear and positive evidence that accused-respondents deliberately took advantage of their superior strength—not simply to subdue the deceased or defend themselves—but to kill the deceased.

The rationale behind the Court's ruling in *Nacino v. Office of the Ombudsman*⁸⁷ is likewise applicable to the case at bar:

x x x [I]t would pose a threat to future law enforcement undertakings if military and police officials would be held susceptible to criminal charges for injury or death resulting from a legitimate operation. It will be like a Sword of Damocles hanging over their heads, which can paralyze them and consequently maim the government's efforts to curb criminality in the interest of self-preservation. There is no perfect law enforcement operation. To the contrary, they are mostly idiosyncratic and risky. There is no guarantee of police officers' safety even in developed countries possessed of sophisticated crime-fighting technology.⁸⁸

To rule that police officers should disarm themselves or ensure that their number is not more than their targets in every police operation would be the height of absurdity.

⁸⁶ See Section 2(A)(1)(i), Rule 21 of the Revised Rules of Procedure before the Administrative Disciplinary Authorities and Internal Affairs Service of the Philippine National Police, NAPOLCOM Memorandum Circular No. 2016-0002, issued on March 7, 2016.

SECTION 2. Classification of Offenses. — For purposes of determining jurisdiction and applying the appropriate penalty, administrative offenses are classified into light, less grave and grave:

A. Light Offenses

1) Simple Neglect of Duty — shall include but not limited to the following:

x x x x

i) fail to report for duty in prescribed uniform with badge, identification card, service firearm and other required equipment, except those not required to wear the prescribed uniform by reason of the exigency of the service[.]

⁸⁷ 861 Phil. 602 (2019).

⁸⁸ *Id.* at 655.

The OMB-MOLEO did not act with grave abuse of discretion in absolving exonerated-respondents from any criminal liability.

Petitioner did not dispute the roles taken by exonerated-respondents as contended by them in their respective counter-affidavits. However, she maintains that conspiracy exists among all respondents who conducted and took part in the police operation and thus, the OMB-MOLEO acted with grave abuse of discretion in exonerating them.⁸⁹

The Court is not convinced.

As aptly held by the OMB-MOLEO, the criminal complaint against Manapat and Matining, the Investigators-On-Case, and Andaya, from the Northern Police District-Crime Laboratory Office, should be dismissed outright as their involvement in the case was after the fact and they were not part of the police operation.

Anent the remaining exonerated-respondents, the OMB-MOLEO likewise aptly absolved them as the records were bereft of any details as to their participation in the actual shooting incident that led to the deaths of Luis and Gabriel—unlike accused-respondents who admitted to shooting the deceased. At the risk of being repetitive, the Court stresses that petitioner failed to present any clear and convincing evidence that the sole purpose of the police operation was to kill the deceased.

Petitioner's use of the statement "[a]ll for one, one for all, in good times and in bad times"⁹⁰ as justification for her contention that all the recipients of the Certificate of Commendation⁹¹ in relation the police operation in question should be held criminally liable together with accused-respondents had no basis in law and in logic. Evidently, petitioner's allegation of conspiracy with respect to exonerated-respondents remains unsubstantiated.

⁸⁹ *Rollo*, p. 16.

⁹⁰ *Id.* at 24.

⁹¹ *Id.* at 238.

In fine, the Court finds that the OMB-MOLEO's determination of probable cause was consistent with the basic precepts of criminal law and based on the evidence presented during the preliminary investigation. Thus, the assailed Joint Order and Joint Resolution were not tainted with grave abuse of discretion as there were no indication that these were issued capriciously, whimsically, arbitrarily, or in a despotic manner.

WHEREFORE, the petition is hereby **DISMISSED**. The Joint Resolution dated January 15, 2020, and Joint Order dated March 8, 2021, of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Office in OMB-P-C-17-0149 and OMB-P-A-17-0160 are **AFFIRMED**.

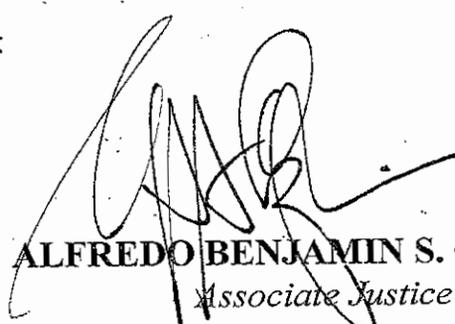
The prayer for the issuance of a temporary restraining order and/or preliminary injunction is **DENIED**.

SO ORDERED.

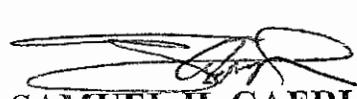


HENRI JEAN PAUL B. INTING
Associate Justice

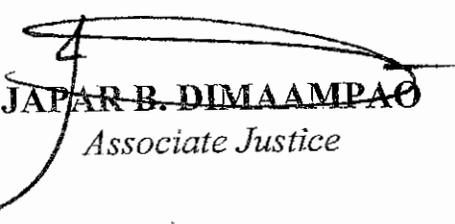
WE CONCUR:



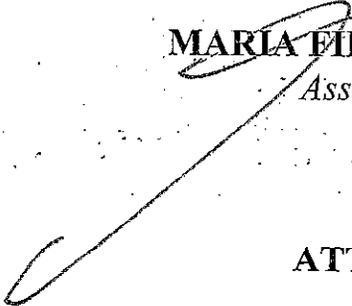
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

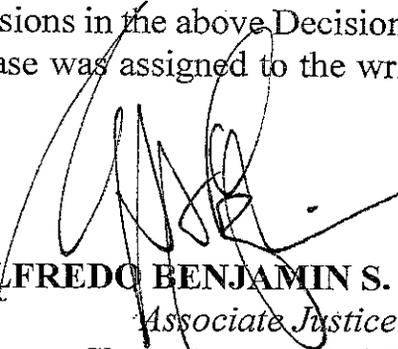


JAPAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice