Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BDO LIFE ASSURANCE, INC. (FORMERLY GENERALI PILIPINAS LIFE ASSURANCE CO., INC.),
Petitioner,

- versus -

ATTY. EMERSON U. PALAD,
Respondent.

G.R. No. 237845

Present:

PERALTA, *J.*,
Chairperson,
LEONEN,*
REYES, A., JR.,
HERNANDO, and
INTING, *JJ.*

Promulgated:

October 16, 2019
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DECISION

REYES, A., JR., *J.*:

THE CASE

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the October 2, 2017 Amended Decision[2] of the Court of Appeals (CA), and its February 27, 2018 Resolution.[3] The aforestated amended the CA's prior May 12, 2017 Decision[4] which affirmed with modification the Final Resolution dated December 30, 2010 of the Assistant Prosecutor of Makati City to find probable cause to charge respondent Atty. Emerson U. Palad (Palad) with attempted estafa thru falsification of public documents, as a conspirator.

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* On wellness leave.

1 *Rollo*, pp. 433-466.

2 Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Ramon A. Cruz and Carmelita Salandanan-Maranan, concurring; id. at 75-95.

3 Id. at 97-98.

4 Id. at 100-133.

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THE ANTECEDENT FACTS

The antecedents, as reproduced by the CA in its Decision, are culled from the narration of the Assistant City Prosecutor.[5] The issues herein stem from a case for estafa through falsification of documents filed by petitioner BDO Life Assurance (formerly, as Generali Pilipinas Assurance Co., Inc. and Generali Pilipinas Insurance Company, Inc.), through their authorized representatives Jose Maria F. Ignacio and Roland P. Arcadio, against Raynel Thomas V. Alvarado (Alvarado), Genevie B. Gragas (Gragas), Vincent Paul L. Amposta (Amposta), Teodoro M. Olguera (Olguera), Cynthia O. Taniegra (Taniegra), Armel M. Santos (Santos), Imelda B. Neo (Neo), and respondent Palad.[6] Alvarado had already been indicted for attempted estafa through falsification of public documents, and his inclusion for preliminary investigation referred only to the motor vehicle insurance claim that he made from petitioner.[7]

The records from the National Bureau of Investigation (NBI) show that in May 2010, two Personal Accident Insurance claims on the death of spouses Carlos and Norma Andrada (spouses Andrada) were filed by Alvarado in petitioner's office under the name of Carlos Raynel Lao Andrada, the spouses Andradas' designated beneficiary.[8] The benefit coverage amounts to Php3,000,000.00, plus Php200,000.00 as burial expenses and Php200,000.00 as medical expenses for each of the insured.[9]

To support his claim, Alvarado submitted the following documents: (1) Death Certificate of insured Carlos Andrada; (2) Death Certificate of Norma Andrada; (3) An excerpt from a police blotter dated January 8, 2010 issued by the Philippine National Police, Flora Municipal Police Station, Flora, Apayao; (4) LTO Official Receipt dated March 3, 2009 issued in the name of Carlos D. Andrada for mother vehicle with Plate No. WVW 963; (5) LTO Certificate of Registration dated March 8, 2001 issued in the name of Carlos Andrada for the Ford Expedition with Plate No. WVW 963; and (6) Professional Driver's License of Juan Ernesto Magadia Ciso, the alleged driver of the Andradas.[10]

In order to analyze the two insurance claims, petitioner sought the services of an external investigator to check on the veracity of the documents submitted by Alvarado a.k.a. Carl Andrada. In the course of the investigation, petitioner discovered that there was another claim filed by the beneficiary-son Carl Raynel Lao Andrada for his Own Damage and Named Personal Accident

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5 Id. at 101.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id. at 102.

on the Ford Expedition with Plate No. WVW 963, the insured vehicle, which allegedly sustained damages on December 28, 2009 due to the homicide hold-up of the insured spouses, their driver Juan Ernesto M. Ciso, and bodyguard Mario Ellie Ciso. Such claim was assigned to the Technical Inspection Group (TIG), an independent adjuster, whose President and Chief Executive Officer is Teodoro M. Olguera. In its Evaluation Report dated March 22, 2010, the TIG confirmed the veracity of the incident and recommended to petitioner that the motor vehicle claim be paid. This claim was approved by petitioner, and Alvarado a.k.a. Carl Andrada received on March 12, 2010 the proceeds amounting to Php100,000.00.[11]

On the other hand, the two Personal Accident claims of Alvarado a.k.a. Carl Andrada were originally assigned to a different adjuster. However, said adjuster requested that the same be assigned to the TIG. Armel Santos, petitioner's Claims Supervisor, then reassigned the claims to the TIG service on Marine Survey and Adjustment Company, an independent claim adjuster, for the usual evaluation and recommendation.[12] The evaluation reports of the adjuster, together with the documents, were considered by Taniegra, who recommended the approval of the claims. Santos and Neo processed the approval.

In a separate investigation conducted by the petitioner, it was discovered that all the documents submitted by Alvarado to support his personal accident insurance claims and that of the motor vehicle claim were fakes. Petitioner found out that the name "Juan Ernesto M. Ciso" did not exist; no driver's license was ever issued to the spouses Andrada; the LTO Property Division had not issued Plate No. WVW 963, as of June 10, 2010; as per Certificate issued by the NAPOLCOM PNP, Police Regional Office-Cordillera, SPO1 Julio Caballero Yusop was not an organic member of their Office and per available records, no record of incident transpired within their area of responsibility on December 28, 2009; and, the entries in the police blotter did not exist on record.[13]

Alarmed by these findings, petitioner sought the assistance of the Office of the Special Task Force of the NBI for investigation and the arrest of Alvarado a.k.a. Carl Andrada once cause for doing so was discovered. Upon verification from the National Statistics Office, it was found that while there indeed was a Carl Raynel Andrada, based on his birth record on file, there are no death records of the spouses Andrada.[14]

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11 Id.
12 Id. at 103.
13 Id.
14 Id.

As a result of these findings, an entrapment operation was set and implemented on July 2, 2010, at around 2 o'clock in the morning inside petitioner's office in Makati. During the operation, Alvarado, Gragas, who represented herself as Alvarado's aunt, and Palad, the respondent herein, arrived.[15] Renato A. Vergel De Dios (Vergel De Dios), petitioner's President, inquired as to the development regarding the police investigation of the incident involving the spouses Andrada. Alvarado and Gragas said that they had not received any word from the police. Palad offered to Vergel De Dios a copy of the Police Report which was originally submitted by Alvarado.

When asked for identification documents, Palad presented his identification card issued by the Integrated Bar of the Philippines (IBP), while Gragas failed to show any. Nevertheless, they all signed the check voucher and release claim for the payments of the insurance benefit worth almost Php6,240,000.00.[16] When the two marked Banco De Oro checks in the amount of Php3,120,000.00 each were tendered to and received by Alvarado, a pre-arranged signal was given to the NBI operatives who, subsequently, arrested the trio.[17]

It was then discovered that claimant Carl Andrada's real name was Raynel Thomas Alvarado, while "Melanie Andrada," who pretended to be the claimant's aunt, was actually found to be Genevie Gragas *y* Bartolome.[18]

During questioning, Alvarado and Gragas pointed to a certain Amposta, who happened to be Palad's brother-in-law, as the mastermind and financier of the *modus operandi* wherein insurance companies were defrauded by using falsified and fictitious documents.[19]

The Proceedings at the Prosecutor Level

After poring over the affidavits adduced by the parties implicated in the averred insurance fraud, the assistant city prosecutor found probable cause only against Alvarado, who pretended to be policy beneficiary Carl Andrada, and Gragas, who presented herself as "Carl's" aunt. The prosecutor ruled that there was no proof that the other named respondents therein dealt and cooperated with Alvarado and Gragas to such a degree that they could be branded conspirators to the crime.[20]

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15 Id.
16 Id.
17 Id. at 104.
18 Id.
19 Id. at 105.
20 Id.

As to the other named individuals, it was determined that Neo, Santos, and Taniegra only performed their duties in processing the fraudulent claims; that Olguera, being the President of the TIG and who was requested by Alvarado to survey the factual basis for the Andrada claims, could not be expected to personally conduct the investigations regarding the homicide and hold-up that triggered petitioner's obligation to pay such claims; that Amposta merely intended to discount the Generali checks that Alvarado and Gragas would have received pursuant to an innocent arrangement he reached with Gragas some months prior; and that Palad merely accompanied Alvarado and Gragas to receive the payment, upon request of the latter.[21]

The dispositive portion of the prosecutor's Final Resolution reflects said findings, to wit:

> WHEREFORE, premises considered, it is hereby recommended that Raynel Thomas Alvarado y Villas a.k.a. Carl Raynel Lao Andrada and Genevie Gragas y Bartolome a.k.a. Melanie Andrada, be indicted for violation of THE REVISED PENAL CODE, art. 315, par. 2(a) and the attached Information be approved for filing in court.
>
> Further, it is recommended that Genevie Gragas y Bartolome be indicted as conspirator of Raynel Thomas y Villas in the case of attempted estafa thru falsification of public documents.
>
> The complaint against Atty. Emerson U. Palad, Vincent Paul L. Amposta, Teodoro M. Olguera, Cynthia O. Taniegra, Armel M. Santos, and Imelda B. Neo is recommended to be, as upon approval, it is hereby dismissed for insufficiency of evidence.[22]

Petitioner, thus, filed a Petition for Review with the Department of Justice, which denied the same through a Resolution dated May 16, 2015.[23]

The Proceedings with the Appellate Court

On appeal with the CA, the petitioner alleged that the Department of Justice committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in issuing the assailed Resolution, which dismissed its petition for review of the Resolution of the City Prosecutor of Makati insofar as it dismissed the complaint for attempted estafa through the falsification of public documents against Santos, Olguera, Amposta, and Palad.[24]

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21 Id.
22 Id. at 106.
23 Id.
24 Id. at 107.

Initially, the CA found merit in the appeal, and reversed the Final Resolution. In its Decision dated May 12, 2017, the CA ruled that the Prosecutor General committed grave abuse of discretion for having affirmed a stricter standard to determine the existence of probable cause,[25] the standard being "clear and convincing evidence" and proof beyond reasonable doubt. Citing jurisprudence as basis,[26] the CA emphasized that the test in finding probable cause is reasonableness and believability, *i.e.*, that an average person can engender a well-founded belief that the accused has committed the crime alleged, and in affirming a different standard, the Prosecutor General has not acted in accordance with law, had acted arbitrarily, and had, thus, acted with grave abuse of discretion.

The CA found upon its own independent review that there was probable cause to charge with the same felony as that of Alvarado and Gragas and as conspirators of the same, Amposta, Olguera, Taniegra, and herein respondent Palad. The dispositive portion of the CA's initial Decision reads, to wit:

> **WHEREFORE**, premises considered, the instant Petition for *Certiorari* is **GRANTED**. The assailed Resolution dated 16 May 2015 of the Prosecutor General is hereby declared **NULL and VOID** for having been issued with grave abuse of discretion.
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> Pursuant to this Decision, the Final Resolution of the assistant city prosecutor of Makati City dated 30 December 2010 is **AFFIRMED with MODIFICATION**, to the effect that:
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> (a) We **affirm** that there is probable cause to charge Raynel Thomas Alvarado y Villas and Genevie Gragas y Bartolome with attempted estafa thru falsification of public documents. We also affirm the absence of probable cause to indict former respondent Imelda Neo and respondent Armel Santos, and
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> (b) We **modify** the Final Resolution to find probable cause to charge with the same felony and as conspirators of Alvarado and Gragas the following:
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> (1) Respondent Vincent Paul Amposta;
> (2) Respondent Teodoro M. Olguera;
> (3) Respondent Atty. Emerson U. Palad; and
> (4) Former respondent Cynthia O. Taniegra.
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> **SO ORDERED.**[27]

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25 Id. at 119.
26 Id. at 121, citing *Unilever Philippines v. Tan*, 725 Phil. 486, 497-498 (2014).
27 Id. at 132.

Palad and Vincent Amposta filed separate Motions for Reconsideration of the above ruling of the CA. On October 2, 2017, the CA promulgated an Amended Decision, which reversed its earlier ruling charging Palad with probable cause. The dispositive portion of the same reads, to wit:

> **WHEREFORE**, premises considered, the Court resolves the following:
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> 1) The Motion for Reconsideration filed by respondent Vincent Paul L. Amposta is **DENIED** for lack of merit;
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> 2) The Motion for Reconsideration filed by respondent Atty. Emerson U. Palad is hereby **GRANTED**; and
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> 3) This Court's 12 May 2017 Decision is **AMENDED** as follows:
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> "**WHEREFORE**, premises considered, the instant Petition for Certiorari is **PARTIALLY GRANTED** in that the Office of the City Prosecutor of Makati City is hereby **ORDERED** to indict for attempted estafa thru falsification of public documents respondents **Vincent Paul L. Amposta** and **Teodoro M. Olguera** in relation to NPS No. XV-05-INQ-10G-00275. The rest of the Final Resolution rendered by the Office of the City Prosecutor of Makati City dated 30 December 2010 is **AFFIRMED**."
>
> **SO ORDERED**.[28]

In amending its earlier Decision, the CA found merit in Palad's arguments that no probable cause exists to include him in the charge sheet.[29] The CA found that a nuanced look at the records of the case will show that Palad had no participation in the insurance fraud, as he was only performing his duty as a lawyer by accompanying his clients in the recovery of the insurance proceeds. The CA reiterated that the insurance checks were already ready for collection when Palad came into the scene, and that petitioners could not be defrauded any further with or without his presence.[30] Palad merely submitted the police report supplied by his clients and that was already on file with petitioner, which was an action done in the ordinary course of business, typical for any practicing private lawyer.

The CA, likewise, held that Palad's voluntary submission of his IBP card reveals that he did not know that his clients were not who they represented themselves to be, as no reasonable and prudent person much less

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28 Id. at 94.
29 Id. at 89.
30 Id. at 90.

a lawyer would intentionally present his true identification card if he knew his clients are in the process of committing fraud.[31]

All told, the CA emphasized that conspiracy cannot be established by mere inferences or conjectures, and that petitioner failed to prove that Palad performed an overt act in pursuance or furtherance of the alleged complicity, so as to convince the investigating prosecutor that there is probable cause that Palad conspired with the others to commit the crime.[32]

Petitioner's Motion for Reconsideration was denied by the CA in its February 27, 2018 Resolution. Hence, this Petition.

THE ISSUE IN THE CASE AND THE ARGUMENTS OF THE PARTIES

The issue being brought for review is whether or not the Court of Appeals erred in amending its prior Decision and finding that there was no probable cause to indict Palad for the crime of attempted estafa through falsification, as a conspirator.[33]

In its Petition for Review, petitioner posits that Palad was not a mere innocent participant accompanying his clients, but a willing co-conspirator with his brother-in-law, Amposta, and whose presence and cooperation was indispensable to consummate the fraudulent act and ensure the receipt of the insurance proceeds.[34] Petitioner alleges that prior to the release of the proceeds, and during the entrapment operation, its president Vergel De Dios did not blindly release the insurance proceeds to Alvarado and Gragas. In fact, Vergel De Dios asked verification questions which were addressed not by the two, but by Palad. The latter was also an active participant in procuring the proceeds, while Alvarado and Gragas passively observed him perform his part in the conspiracy.[35]

Thus, petitioner argues that the presence of Palad was necessary and indispensable in the masquerade of fraud created by Alvarado and Gragas in order to fortify their story and to inspire confidence that the claims were valid and legal.[36] It further emphasized that any prudent lawyer would not immediately accommodate strangers and represent them in a claim involving

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31 Id.
32 Id. at 91.
33 Id. at 447-448.
34 Id. at 448.
35 Id. at 449.
36 Id. at 450.

more than six million pesos without even the knowledge or proof of who they are or their identities.[37]

Also, the fact that Palad's brother-in-law, Amposta, had a criminal case filed against him in other courts for estafa through falsification of public documents, in the mind of the petitioner, should have made Palad cautious in accepting referral of clients for lawyering especially those involving insurance fraud claims.[38]

For petitioner, Palad's relation to Amposta is not merely that of a mere client but that of a family member upon whom he reposed trust and confidence, which meant that there is an inescapable inference that Palad was aware of the fraudulent scheme and decided to take part in the concerted act.[39] Petitioner cited the case of *People v. Balasa*[40] wherein it was held that if the indispensable act is performed by one who is related to the co-conspirators, it is not a far-fetched assumption that he or she is aware of the fraudulent scheme. This applies in the case when Palad accompanied Alvarado and Gragas. Palad's self-serving allegation of denial could not justify his actual presence at the time of the entrapment operation or overturn the finding of probable cause against him.[41]

In support, petitioner stressed the doctrine that the function of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. The venue wherein Palad could present his defense is before the court during a full-blown trial.[42] For petitioner, Palad's self-serving allegations denying any knowledge or participation in the offense being charged without showing convincing evidence in support thereof simply cannot support the CA's Amended Decision recalling the earlier order of indictment against him.

On the other hand, Palad argues that the CA did not commit grave abuse of discretion in amending its prior Decision and, subsequently, dismissing the case against him as the pieces of evidence presented by petitioner were insufficient to establish probable cause to indict Palad.[43] This was a fact confirmed by two administrative bodies, both of which possess the expertise to determine the existence of probable cause, and whose findings must be accorded with great weight and respect.[44]

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37 Id. at 450.
38 Id. at 451-452.
39 Id. at 452.
40 Id. at 453, citing 356 Phil. 362, 391 (1998).
41 Id. at 454.
42 Id. at 455.
43 Id. at 837.
44 Id. at 840.

Aside from the procedural considerations in his favor, Palad likewise argues that he is not a co-conspirator in the crime of estafa through falsification of public documents. His mere presence during the entrapment operation is not enough to hold him as a co-conspirator, as it must be first shown that he actively participated in the commission of the crime charged.[45] Contrary to its statement, petitioner failed to present clear and convincing evidence that prior to the commission of the crime, Palad previously met with his co-conspirator and, subsequently, agreed to the commission of the offense. Petitioner merely inferred that there existed a conspiracy between Palad and the other respondents from the sole fact that Palad is the brother-in-law of the alleged mastermind, who is Amposta.[46]

Palad maintains that the acts petitioner proved that what he did are not directly related to the elements[47] of the crime of estafa through the falsification of a public document, such acts which include his presence during the tendering of the check, his presentation of his identification card, and his answering of questions posited to him by Vergel De Dios. In order to be considered a conspirator, Palad argues that these acts should have first, a direct and causal connection with the crime or any of the elements thereof, and second, the act should show an unequivocal intent to commit the crime for which he is charged as a conspirator.[48] In this case, not only are such acts not related in the slightest to the crime alleged, they, when taken in regular context, are done in Palad's capacity as a lawyer and in routine fidelity to his client.

THE COURT'S RULING

The Petition is bereft of merit.

The determination of probable cause is a question of fact that is not a proper subject of the Court's review.

In filing its Petition for Review on *Certiorari*, the petitioner claims that the CA, as well as the Department of Justice through the finding of the prosecutor in the case, committed grave abuse of discretion by ruling that Palad is not included in the charge sheet for estafa. In essence, the petitioner is asking the Court to take a second look at the facts of the case in order to determine whether or not there is probable cause to indict Palad as a co-conspirator in the fraudulent scheme as allegedly concocted by Alvarado.

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45 Id. at 843.
46 Id. at 845.
47 Id. at 847-488.
48 Id. at 486.

It must, however, be emphasized that the Court is not a trier of facts. In *Gatan v. Vinarao*,[49] citing *Miro v. Vda. de Erederos*,[50] the Court expanded on the parameters of its judicial review power under a Rule 45 petition, to wit:

> *a. Rule 45 petition is limited to questions of law*
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> Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. As held in *Diokno v. Hon. Cacdac,* a reexamination of factual findings is outside the province of a petition for review on *certiorari*, to wit:
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> > It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts[.] x x x. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.*
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> There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts. Unless the case falls under any of the recognized exceptions, we are limited solely to the review of legal questions.
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> *b. Rule 45 petition is limited to errors of the appellate court*
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> Furthermore, the "errors" which we may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance. It is imperative that we refrain from conducting further scrutiny of the findings of fact made by trial courts, lest we convert this Court into a trier of facts. As held in *Reman Recio v. Heirs of the Spouses Agueda and Maria Altamirano, etc., et al.,* our review is limited only to the errors of law committed by the appellate court, to wit:
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> > Under Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory. (Citations omitted.)

All the more does the aforementioned apply in this particular instance because the determination of probable cause is and will always entail a review

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49 G.R. No. 205912, October 18, 2017, 842 SCRA 602, 610-611.

50 721 Phil. 772, 785-787 (2013).

of the facts of the case.[51] In *P/C Supt. Pfleider v. People*,[52] it was held that the determination of probable cause is not lodged with the Court, and that the latter's duty is only to ascertain whether there was grave abuse of discretion in the determination of the same, on the part of a lower tribunal with the duty to look at the facts to see if probable cause is present, as is the prosecutor in the case at bar. To wit:

> Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction. This is consistent with the general rule that criminal prosecutions may not be restrained or stayed by injunction, preliminary or final. There are, however, exceptions to this rule. Among the exceptions are enumerated in *Brocka v. Enrile.*[53]

Herein, petitioner has been unable to convince the Court that an exception exists to warrant opening up the proceedings for a factual review. This, especially as the CA's Amended Decision conforms without deviation from the factual findings of the Department of Justice, the latter tribunal, who undoubtedly had the best possible opportunity and jurisdiction to ascertain if there is probable cause to indict Palad.

Even without the procedural bar, as well as the respect afforded to the factual findings of the lower tribunals, the Court's independent review of the case convinces the Court that petitioner's appeal, on its merits, has no validity.

Probable cause is lacking to find that Palad is a co-conspirator in the fraudulent scheme against Petitioner.

The Court agrees with the petitioner that a finding of probable cause on the part of the prosecutor should not be equivalent to a finding of guilt beyond reasonable doubt. During a preliminary investigation, the prosecutor only determines whether there is sufficient ground to engender a well-founded

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51 *P/C Supt. Pfleider v. People*, 811 Phil. 151, 159 (2017).

52 Id.

53 Id.; The cited case of *Brocka v. Enrile* lists the following as exceptions to the general rule: 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.

belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[54]

Likewise, the Court finds that Palad is mistaken in his argument that the lower courts rightfully excluded him from the charge, solely because of his allegation that there was no direct evidence that linked him to the crime committed. Direct proof of conspiracy is not indispensable and the same may be inferred from the acts of the perpetrators. As explained in *Marasigan v. Fuentes, et al.*:[55]

> Direct proof of conspiracy is rarely found; circumstantial evidence is often resorted to in order to prove its existence. Absent of any direct proof, as in the present case, conspiracy may be deduced from the mode, method, and manner the offense was perpetrated, or inferred from the acts of the accused themselves, when such acts point to a joint purpose and design, concerted action, and community of interest. An accused participates as a conspirator if he or she has performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime, or by exerting moral ascendancy over the other co-conspirators. Stated otherwise, it is not essential that there be proof of the previous agreement and decision to commit the crime; it is sufficient that the malefactors acted in concert pursuant to the same objective.[56]

However, the mere fact that a lesser scintilla of proof is necessary in order to find probable cause as to a suspect's involvement does not take away the fact that the burden is on the part of the accuser to show a substantial probability that an accused's actions or lack thereof constitute participation in the offense. Any finding should still be grounded on reasonable evidence, and not mere conjectures or speculation, which is wanting in this case.

Conspiracy under the law, for which Palad is being accused as a part of, occurs when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[57] Even with this basic understanding of conspiracy as an indicator of criminal liability, it is the Court's belief that petitioner was unable to show that Palad acted in concert pursuant to the objective to defraud the company, nor had any knowledge about the scheme, prompting Palad's exclusion from the charge as a co-conspirator.

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54 *Sec. De Lima, et al. v. Reyes*, 776 Phil. 623, 636 (2016).
55 776 Phil. 574 (2016).
56 Id. at 588.
57 Revised Penal Code, Article 8.

Petitioner in essence anchors its claim of Palad's involvement in the conspiracy on two grounds. First, the petitioner attempts to highlight that Palad's actions during the entrapment operation, before, during, and after, are suspicious enough to warrant a well-founded belief that he was well-aware of the goings-on attendant to the fraud. Second, Palad's identity as Amposta's brother-in-law and status as a lawyer, for petitioner, highlights the unmistakable fact that Palad had knowledge of the scheme despite the latter's averments to the contrary.

Both reasons are grounded on hypothesis more than actuality. Mere speculation, especially as to the state of a mind of an accused, does not pass the standards set for the finding of probable cause, even if what is looked for is not necessarily proof beyond reasonable doubt.

First, Palad's presence during the entrapment operation does not in itself constitute a shady occurrence that would automatically warrant suspicion. Even if the accused were present and agreed to cooperate with the main perpetrators of the crime, his or her mere presence does not make him or her a party to it, absent any active participation in the furtherance of the scheme's common design or purpose.[58] It is axiomatic that mere knowledge, acquiescence or approval of the act, without the cooperation and the agreement to cooperate, is not enough to establish conspiracy.[59] This is expanded on and bolstered in *Rimando v. People*,[60] where it was succinctly ruled:

> Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy. To establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. Nevertheless, mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.
>
> The fact that petitioner accompanied her husband at the restaurant and allowed her husband to place the money inside her bag would not be sufficient to justify the conclusion that conspiracy existed. In order to hold an accused liable as co-principal by reason of conspiracy, he or she must be shown to have performed an overt act in pursuance or in furtherance of conspiracy.
>
> This Court has held that an overt or external act –
>
> is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning

58 *People v. Jesalva*, 811 Phil. 299, 311 (2017).
59 Id.
60 G.R. No. 229701, November 29, 2017, 847 SCRA 339.

> or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made. The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of *Viada,* the overt acts must have an immediate and necessary relation to the offense.[61]

Petitioner is mistaken by alleging that, by sole virtue of Palad being Alvarado's chosen counsel, this without a doubt would mean that the former is well aware of the circumstances of the fraud and that his accompanying Alvarado and Gragas was designed to perpetrate the same. This is an incorrect and prejudicial assumption, considering the fact that Palad was merely asked last-minute to join a companion of his brother-in-law, Amposta. Palad's act of accompanying Alvarado and Gragas to receive the checks was purely a routine action on the part of an attorney as requested. His giving of an identification card was further an indicator that he was completely out of the loop, particularly because his companions were using aliases and not their real names. By agreeing to be his client's counsel, a lawyer represents that he or she will exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do, to protect his client's interests and take all steps or do all acts necessary therefor, and his client may reasonably expect him to discharge his obligations diligently.[62] In this case, the ordinary diligence required from the lawyer consisted of Palad going with his client, or at least the referred-to companion of this client, and delivering a document police report which was originally submitted by Alvarado.

While there may have been lack of absolute diligence, there was no legal nor even ethical compulsion for Palad to ascertain that the police report was of legitimate import, a police report which was most likely valid on its face as with the other documents submitted by Alvarado to petitioner,

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61 Id. at 353-355.

62 *Suarez v. Court of Appeals*, 292-A Phil. 386, 391-392 (1993), citing Legal Ethics, Ruben E. Agpalo, 4th ed., pp. 157, 169, 175.

documents which, in fact, needed the scrutiny of third party analyzers before they could be tagged as fakes. It must also be recalled that the police report had already been existing even without Palad's offering or the same.

If one were to put one's self in Palad's moccasins, his actions were not out of the ordinary for a lawyer. It is incorrect for petitioner to state that the crime could not have been consummated without Palad's presence. For one thing, as petitioner itself acknowledges, the checks were already prepared for tendering as a result of the entrapment operation. Even if Palad were to be absent, the giving of the checks for the insurance proceedings would have pushed through. It is self-serving of petitioner to assert that Palad's presence gave an *imprimatur*, as well as a sense of validity to the nefarious transaction, as by the very nature of the operation, the checks would have been given, regardless. There is simply no masquerade of fraud as petitioner argues, because the fraud was already perpetuated, among other reasons.

Second, petitioner is vastly mistaken when it says that Palad's relationship with Amposta is an indicator of his complicity. Suffice it to say, mere relation is not enough to attribute criminal responsibility, especially when taken as the sole factor or even a primary one. At best, it adds to circumstantial proof that would shed light on the motives and attributions of the parties. By itself, however, it would set a dangerous precedent to ascribe even just reasonable link for conspiracy just because the two alleged co-conspirators are related.

Tangentially, *People v. Balasa*, which petitioner cites to support its claim that Palad's relation to the alleged mastermind, Amposta, is an indicator that he was aware of the scheme, is inapplicable to the case. In the *Balasa* case, the Court categorically stated that the accused therein was not implicated as a co-conspirator solely because he was the father of the principal proponent of the perpetrated fraud, but due to other convincing proofs such as being an actual paymaster of the fraud, funding the latter. Even if one were to consider solely the question of relationship, the fact that the accused in *People v. Balasa* was the father and husband to three of the organizers is a more convincing proof of knowledge of the scheme, especially compared to the connection between Palad and Amposta, which is not even a blood relationship. Amposta is merely Palad's brother-in-law, and petitioner was unable to adduce further evidence establishing more than a theoretical link.

Third, petitioner pleading for the Court to include Palad in the charge sheet by opining that any defense he may proffer as to his innocence may be presented in the course of trial, is untenable reasoning. Agreeing with this proposition will do away with the very role and object of preliminary investigation, which is "to secure the innocent against hasty, malicious, and

oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."[63]

There are practical as well as legal considerations present to warrant exclusion. In this regard, not only will Palad, which in the eyes of the Court is an innocent bystander unduly caught up in the controversy, be rightfully excluded on account of his apparent non-involvement, so too will the State be spared from exerting its resources persecuting an innocent individual. The parties are currently embroiled in this tangled controversy, where not only Palad is being tagged as a member of the conspiracy, but various other denizens who have their own defenses and justifications as to why they should not be involved. In the Court's power of judicial review, it is incumbent on the Court to ease the burden of the trial court in zeroing on the real culprits, so that the latter may be brought to face the dictates of criminal justice. Part and parcel of that is to likewise segregate and remove those who have no business being suspects as their involvement, if at all even present, does not pass the test of reasonable relation in the conspiracy.

In conclusion, accusing Palad of being an active participant in the entire scheme is simply spurious. He was only present during the receiving of the fraudulent proceeds, and not during the steady progression of the falsification and fraud. He was merely asked to accompany Alvarado and Gragas for reasons even petitioner was not able to reasonably show were suspicious. This is a classic case of an innocent individual being in the wrong place, at the wrong time. Palad's decision to agree to go with Alvarado and Gragas should not prejudice his life, liberty, security, and peace of mind. While it may have not been the most diligent decision, it is not a criminal one which would place criminal liability on one who does not deserve it.

In the absence of any motive to be complicit in the scheme, the Court must adhere to the constitutionally-protected presumption of innocence and remove Palad from the charge sheet, affirming the findings of both the CA and the Department of Justice. While the Court commiserates with petitioner as regards the fraud perpetuated against it, such ire, however justified and understandable, should not translate in the inclusion of all the names however in reality detached, involved on the sole basis that petitioner feels they are party to the crime, when clear proof on evidence will show their non-involvement. The factual antecedents and the evidence on record behooves the Court to rule in agreement with the lower tribunals whose findings are to be respected in the absence of their arbitrariness. Petitioner was unable to show that grave abuse of discretion peppered those findings, and was only able to voice out its suspicions that Palad was involved, and nothing more.

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63 *Callo-Claridad v. Esteban, et al.*, 707 Phil. 172, 192-193 (2013).

Reyes

Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion,[64] and which, among many other reasons as discussed, warrants the dismissal of petitioner's appeal.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The Amended Decision of the Court of Appeals, and its February 27, 2018 Resolution are hereby **AFFIRMED**.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

(On Wellness Leave)
MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

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64 Id. at 185.

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.

DIOSDADO M. PERALTA
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.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

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MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

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