

## THIRTEENTH DIVISION

[ CA-G.R. SP NO. 135960, November 10, 2014 ]

**LORETA SINOHIN-MOISES, PETITIONER, VS. DEPARTMENT OF JUSTICE AND ELIZABETH MOISES-GUTIERREZ, RESPONDENTS.**

### DECISION

**LIBREA-LEAGOGO, J.:**

Before this Court is a Petition<sup>[1]</sup> for *Certiorari* (with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction) dated 26 June 2014 under Rule 65 of the Rules of Court, assailing the Resolutions dated 23 June 2010<sup>[2]</sup> and 30 May 2014<sup>[3]</sup> of the Department of Justice in the case entitled "*Elizabeth Moises Gutierrez v. Loreta Sinohin-Moises and Lorena Sinohin-Bellena*" in *I.S. No. 07-K-3575*, which reversed the Resolution dated 04 August 2008 and directed the Provincial Prosecutor of the Province of Nueva Ecija to cause the filing of the corresponding Information for parricide against petitioner, and denied her Urgent Motion for Reconsideration, respectively.

Per JRD verification,<sup>[4]</sup> no comment was filed by private respondent as per CMIS entry. Thus, the fifth paragraph of the Resolution<sup>[5]</sup> dated 22 August 2014 is reiterated and the Petition is submitted for decision.

### **FACTUAL ANTECEDENTS**

A Memorandum for Preliminary Investigation<sup>[6]</sup> for parricide was filed on 06 November 2007 before the Office of the Provincial Prosecutor of Nueva Ecija, docketed as *I.S. No. 07-K-3575*.

In her *Sinumpaang Salaysay*<sup>[7]</sup> dated 06 November 2007, complainant Elizabeth Moises-Gutierrez accused her sister-in-law, respondent Loreta Sinohin-Moises ("Loreta," for brevity) and the latter's sister Lorena Sinohin-Bellena ("Lorena," for brevity), as the persons responsible for the death of Rolando Moises ("Rolando," for brevity). She alleged, *inter alia*, that: respondents Loreta and Lorena killed her brother Rolando on 16 October 2007, at around 7:30 am, inside their house at District 7, Cuyapo, Nueva Ecija; Rolando was able to tell Rebeck Moises ("Rebeck," for brevity) and Romulo Rayopa ("Rayopa," for brevity) when he was inside the tricycle on the way to the hospital that Loreta shot him; Lorena destroyed the evidence of the crime to cover up the crime committed by her sister; and Rolando is married to Loreta as evinced by their Certificate of Marriage.

Respondent Loreta filed her Counter-Affidavit<sup>[8]</sup> dated 10 December 2007, denying the accusation that she killed her husband Rolando. She alleged, *inter alia*, that: on 16 October 2007, Rolando was about to leave their house to buy cavans of *palay*; her father-in-law Faustino Moises ("Faustino," for brevity) was also at their house;

Rolando had Php250,000.00 in his pocket; the police made no report what happened to the money; she noticed that Rolando brought his gun and when she asked why he brought the same, he replied that it was needed; she was inside the comfort room when she heard a gunshot and did not personally see what happened; after she heard the gunshot, she rushed out and saw him lying flat on the floor with blood on his chest and on the floor; she was in panic and screamed while calling his name "*Galman*" (my husband); his pulse stopped and was completely dead; she fainted and after two days, she found herself in a clinic, owned by Dr. Flor Paguio-Esteban ("Dr. Esteban," for brevity), where Rolando was rushed and declared dead; Rebeck was at their house minutes after the incident and was seen by Priscilla Santos ("Santos," for brevity) fixing at his waist a .357 revolver and was the same person who gave the wallet (without the Php250,000.00 cash) that he took from Rolando, to Lorena; after three days of confinement, she went to their house to view Rolando's cadaver; her sister-in-law Evelyn Moises Lazo advised her to hide for quite sometime and was told to stay at the Santos' house; after a couple of days, her in-laws took their service Isuzu Highlander and used the same for about one month despite her repeated pleas to give it back; had she not sought police assistance, the said vehicle would not have been returned; complainant admitted that she has no personal knowledge as she was not around at the time Rolando was shot and therefore her statements are hearsay; the biases and lapses in the investigation were easily discernible as the Police Station Journal and Memorandum Report dated 21 October 2007 of the Cuyapo Police Station stated that what happened was an accident; the policemen did not take into account the missing Php250,000.00 in Rolando's possession that could have backed up the theory of robbery, which the police investigator should have pursued but did not; about four weeks were allowed by the police investigators to lapse yet their theory (dying declaration) was anchored on the statement of Rebeck and Rayopa then available at the day of the incident for which she could have been arrested; the police investigators suppressed or neglected some material statements of Faustino, her niece Sheilla Marie Moises-Diaz, her two children, and Lorena, who were all present on or about the time of the incident; with the response of "*itang*" allegedly spoken by Rolando, which could be interpreted as calling his wife, the police investigators proceeded to make provocative questioning, putting into the mouth the words "*na siyang bumaril sa kanya*" of Rebeck and Rayopa; Rayopa even told Manuel Santos, S/Insp. Jojo Ocampo and Dolan Ramos that Rolando was already dead while on the way to the hospital; the dying declaration is contradicted by the medical reports presented by the police investigators, stating that Rolando was dead upon arrival; they should have investigated Faustino who was present at their house during the said incident; they should have expounded on the possibility of the involvement of Rebeck, who was there before and after the happening of the event and who took Rolando's wallet; the chemist report/certification are contradictory as it certified the presence of powder nitrate on Rolando's *maong* shirt as positive, but yielded negative findings of the powder nitrate on his hands or arms; the police investigators omitted to secure any further certification from the physician regarding the probable time of death; the police memorandum erroneously interpreted the autopsy of the medico legal to have reported two entries of gunshot wounds; records disclose that one Mr. Santos heard only one gunshot, which jibed with her statement; only one slug was recovered; all of which proved that only one gunshot was fired and the nearest possibility is that of an accident; police investigators omitted to submit a medico legal report as to what kind of gun was used, based on the recovered .357 revolver and slug from Rolando's body; this is significant because of the contradictory findings of the police that the gun used was a 9mm (police journal) and .357 caliber

(police memorandum); the police investigators even omitted to secure a certification about the possible distance of the would-be assassin to Rolando; the possibility of an accidental shot is not far-fetched as the same accidental shot was reported in the police memorandum dated 21 October 2007, police journal and police blotter; Nolito Paringit, who Rolando had a deal with for buying *palay*, was not investigated; and the police investigators failed to subject her to a paraffin test.

Respondent Lorena filed her Counter-Affidavit<sup>[9]</sup> dated 10 December 2007, stating that she was not an accessory and that her sister did not kill Rolando. She alleged, *inter alia*, that: on 16 October 200<sup>[7]</sup>, when she returned home from the market, she saw Loreta hysterically asking for *saklolo* and uttering Rolando's name, *Galman*; she saw Rolando lying dead on the floor, no longer breathing, eyes closed and mouth sealed; she ran outside for help where Rayopa and his wife Marta arrived and later Rebeck; they brought the dead body of Rolando to a tricycle and to Paguio Clinic; about twenty minutes from the time Rebeck and Rayopa brought Rolando to the clinic, Rebeck returned to Loreta's house and handed her Rolando's wallet containing Php1,200.00 and IDs; thereafter, three policemen arrived and asked her whether the spouses had quarreled and she said no; they asked her why she cleaned the blood on the floor and she said the blood was still there and nobody ordered her [to clean it]; the three policemen returned and made the same investigation in the afternoon and the following day; she was surprised that she and Loreta were being accused of killing Rolando; and there is no way she could be charged as an [accessory] for the simple reason that Loreta did not kill Rolando.

Complainant filed her Reply<sup>[10]</sup> on 17 December 2007, to which respondents Loreta and Lorena filed their Rejoinder-Affidavit<sup>[11]</sup> dated 11 January 2008.

A Resolution<sup>[12]</sup> dated 25 February 2008 was issued by the Investigating Prosecutor Edison V. Rafanan ("Rafanan," for brevity) of the Office of the Provincial Prosecutor of Nueva Ecija, Cabanatuan City, finding probable cause to indict respondent Loreta for parricide, recommending the approval of the Information, and recommending the dismissal of the charge against respondent Lorena for lack of probable cause.  
<sup>[13]</sup>

However, in the Review Resolution<sup>[14]</sup> dated 23 April 2008 of 1st Asst. Provincial Prosecutor/Officer-in-Charge Floro F. Florendo, he dismissed the case against respondents Loreta and Lorena for insufficiency of evidence.<sup>[15]</sup>

Complainant filed a Petition for Review<sup>[16]</sup> dated 12 May 2008 before the Department of Justice. A Resolution<sup>[17]</sup> dated 04 August 2008 was issued by then Secretary Raul M. Gonzalez, dismissing the petition for review and finding the Review Resolution in accord with the evidence adduced and relevant jurisprudence.

Complainant filed a Motion for Reconsideration<sup>[18]</sup> dated 21 August 2008.

On 23 June 2010, then Acting Secretary Alberto C. Agra issued the first assailed Resolution<sup>[19]</sup> which partially granted the Motion for Reconsideration and directed the filing of the corresponding Information for parricide against respondent Loreta, the dispositive portion of which reads:

**"WHEREFORE,** the instant Motion for Reconsideration is hereby **PARTIALLY GRANTED.** The Provincial Prosecutor of the Province of Nueva Ecija is hereby directed to cause the filing of the corresponding Information for Parricide against Loreta Sinohin-Moises only and to report the action taken within ten (10) days from receipt hereof.

**SO ORDERED.**"<sup>[20]</sup>

Respondent Loreta filed an Urgent Motion for Reconsideration<sup>[21]</sup> dated 09 July 2010, which was denied in the second assailed Resolution<sup>[22]</sup> dated 30 May 2014 issued by Secretary Leila M. De Lima.

Hence, this Petition.

### **RULING**

Petitioner raises the following grounds for allowance of her Petition, viz:

*"1. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT GRANTED PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION DESPITE HAVING BEEN FILED (PRESUMABLY OUT OF TIME OR BEYOND THE 10-DAY REGLEMENTARY PERIOD), DUE TO PRIVATE RESPONDENT'S CLEVER OMISSION (sic) IN NOT STATING THE MATERIAL DATE IT (sic) RECEIVED THE DOJ'S FIRST ORDER OF DISMISSAL WHICH OMISSION IS JURISDICTIONAL. RATHER THAN SLAPPED (sic) APPROPRIATE SANCTION ON THE PRIVATE RESPONDENT'S DEEPENING (sic) SILENCE IN NOT RESPONDING TO PETITIONER'S CHALLENGE TO STATE THE MATERIAL DATE OF RECEIPT OF THE DOJ (sic) FIRST ORDER OF DISMISSAL, OR COMPELL (sic) SAID RESPONDENT TO DISCLOSE THE SAME OR REFERRED (sic) TO ITS RECORD, THE DOJ CASUALLY DOWN-PLAYED (sic) AND CONVENIENTLY NEGATED SAID JURISDICTIONAL DEFECT IN THE RESPONDENT'S MOTION FOR RECONSIDERATION AS ALLEGEDLY ONLY SPECULATIVE(,) IGNORING SETTLED RULE ON THE MATTER. BY THE OMISSION ALONE OF THE MATERIAL DATE OF RECEIPT THE PRIVATE RESPONDENT'S MOTION FOR RECONSIDERATION, IT SHOULD HAVE BEEN SUMMARILY DENIED. THIS IS CASUS OMISSUS.*

*2. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT VIOLATED PETITIONER'S RIGHT TO SPEEDY DISPOSITION OF ITS (sic) CASE BY ITS INORDINATE OR UNDUE DELAY OF ABOUT FOUR (4) YEARS BEFORE IT RENDERED ITS ASSAILED ORDER DATED MAY 30, 2014 WHICH DENIED PETITIONER'S MOTION FOR RECONSIDERATION WARRANTING (sic) THIS HONORABLE COURT'S EXERCISE OF THE WRIT OF CERTIORARI TO STRIKE DOWN SAID ORDER WITH NULLITY THEREBY UPHOLDS (sic) THE PRIOR ORDER OF DISMISSAL BY THE DOJ AND THE REVIEW RESOLUTION OF THE PROVINCIAL PROSECUTOR – AS A PROTECTIVE MEASURE OF PETITIONER'S RIGHT TO SPEEDY DISPOSITION.*

*3. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FOUND*

*PROBABLE CAUSE UPON MERE ASSUMPTIONS AND SUPPOSITIONS  
MISTAKENLY APPLYING THE RULE ON CIRCUMSTANTIAL EVIDENCE.*

*4. THE DOJ COMMITTED GRAVE ABUSE OF DISCRETION IGNORING (sic) SETTLED RULE THAT EVEN IN PRELIMINARY INVESTIGATION, ALL THE ELEMENTS OF THE OFFENSE OF PARRICIDE SHOULD HAVE BEEN ESTABLISHED AT LEAST ON THE QUANTUM OF EVIDENCE OF PROBABLE CAUSE."*<sup>[23]</sup>

Petitioner contends, *inter alia*, that: under the DOJ rules, the 10-day reglementary period from receipt of the order or judgment within which to file a motion for reconsideration is mandatory, it being jurisdictional; rather than compel private respondent to disclose the material date when she received the Resolution which dismissed the appeal, the DOJ ratiocinated that the challenge on the material date was merely speculative; her motion for reconsideration was filed as early as 09 July 2010; it was after about four years that the DOJ resolved the same; the DOJ's findings are merely speculations and suppositions, ignoring that in preliminary investigation all the elements of the crime must be established and that its resolution should not be based on suppositions; the crime of parricide was not established; there are no specific and probable findings that she shot her husband; the slug found inside inside the victim's body was not determined whether it came from the .357 revolver; she was hysterical because of her loving husband's death and had to be sedated; the police could have simply conducted a paraffin test on her; there was no indication in the report that she refused any request for a paraffin test; when she regained consciousness, she proceeded to the police and was making follow-ups with the progress of the investigation; the investigators espoused two views, accident and robbery hold-up; the accident theory, which could have happened when the gun dropped on the floor, accidentally burst and hitting first the victim's hands, then penetrated the wall and ricocheted back at the victim; there was only one gunshot heard; assuming the robbery theory is correct, it is not believable that she would rob her husband; aside from "*itang*," Rolando made no other statements concerning the circumstances of his death; mere call of "*itang*" is not the utterance referred to in a dying declaration; this could hardly be interpreted as pointing to her as the murderer; it could be Rolando's last word to call his wife's name; there was no finding concerning the metal chip found inside Rolando's body; the findings that Rolando sustained a bullet wound in the left scapular area and that she was inside the comfort room do not lead to the identity of the perpetrator; the interval of time during which she was inside the comfort room, her children and niece left for school, to the time others went inside the house offer enough time for anyone to enter and leave the house immediately; only one bullet was fired from the .357 caliber revolver, one slug recovered and only one gunshot was heard by the witnesses; the physician who conducted the autopsy should have been asked to clarify the number of wounds, its seriousness, and its effect, the possible distance between the victim and the assailant, and whether it is possible that the two wounds were caused by one bullet; Dr. Esteban, to whom the deceased was initially brought, should have likewise been asked; some think it was her because the evidence submitted indicate that at that time of the incident, she was the only one with Rolando; there is no evidence that she and Rolando in the past and immediately before the incident had any quarrel to move her to put her husband to death; private respondent's theory is hard to believe for why would she kill her husband inside their house and not hide the .357 revolver; her trauma associated with the