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**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**PCI JIMMY M. FORTALEZA  
and SPO2 FREDDIE A.  
NATIVIDAD,**  
Petitioners,

**G.R. No. 179287**

- versus -

**HON. RAUL M. GONZALEZ** in  
his capacity as the Secretary of  
Justice and **ELIZABETH N.  
OROLA VDA. DE SALABAS,**  
Respondents.

X ----- X  
**ELIZABETH N. OROLA VDA.  
DE SALABAS,**  
Petitioner,

**G.R. No. 182090**

Present:

- versus -

**HON. EDUARDO R. ERMITA,  
HON. MANUEL B. GAITE,  
P/INSP. CLARENCE  
DONGAIL, P/INSP.  
JONATHAN LORILLA,<sup>1</sup> PO3  
ALLEN WINSTON HULLEZA  
and PO2 BERNARDO  
CIMATU,**  
Respondents.

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

Promulgated:

**FEB 0 1 2016**

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**RESOLUTION**

**LEONARDO-DE CASTRO, J.:**

The consolidated petitions in the case at bar stem from the October 2, 2006 Resolution<sup>2</sup> of Secretary of Justice Raul Gonzalez, ordering the

<sup>1</sup> Also spelled as Laurella in some parts of the records.  
<sup>2</sup> Rollo (G.R. No. 182090), p. 26.

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Provincial Prosecutor of Negros Oriental to file an amended Information for Kidnapping and Murder against the following persons:

1. **P/Insp. Clarence Dongail**;
2. Manolo G. Escalante;
3. Ronnie Herrera;
4. *SPO2 Freddie Natividad*;
5. *SPO4 Jimmy Fortaleza*;
6. July ("Kirhat" Dela Rosa) Flores;
7. Carlo "Caloy" De Los Santos;
8. **PO1 Bernardo Cimatu**;
9. **PO2 Allen Winston Hulleza**;
10. **Insp. Jonathan Laurella**;
11. Lorraine "Lulu" Abay;
12. Manerto Cañete;
13. Elma Cañete
14. Elson Cañete; and
15. Jude Montilla<sup>3</sup>

From this Resolution, *Jimmy Fortaleza* and *Freddie Natividad* filed a Petition for *Certiorari* with the Court of Appeals, while **Clarence Dongail**, **Jonathan Lorilla**, **Allen Winston Hulleza**, and **Bernardo Cimatu** appealed to the Office of the President. When the Court of Appeals dismissed<sup>4</sup> the Petition for *Certiorari*, Fortaleza and Natividad filed a Petition for Review with this Court, which was docketed as G.R. No. 179287. The Office of the President, on the other hand, set aside the October 2, 2006 Resolution of the Department of Justice. To assail this Decision<sup>5</sup> dated September 19, 2007 and the subsequent Resolution<sup>6</sup> dated January 9, 2008 denying her Motion for Reconsideration, complainant Elizabeth Orola-Salabas filed a Petition for *Certiorari* with this Court which was docketed as G.R. No. 182090.

The procedural antecedents of the case are as follows:

Maximo Lomoljo, Jr., Ricardo Suganob, and Eleuterio Salabas were allegedly kidnapped in Bacolod City on August 31, 2003. A few days later, their dead bodies were found in different places in Negros Oriental. Several criminal complaints were filed in relation to this incident. The first was filed against **Police Inspector (P/Insp.) Clarence Dongail** alias Dodong and fifteen other John Does before the Bacolod City Prosecution Office. Investigating Prosecutor Rosanna V. Saril-Toledano issued a Resolution dated October 24, 2003 dismissing the complaint for lack of probable cause.

<sup>3</sup> The parties in G.R. No. 179287 are in italics, while the parties in G.R. No. 182090 are underlined.  
<sup>4</sup> *Rollo* (G.R. No. 179287), pp. 27-39; penned by Associate Justice Stephen C. Cruz with Associate Justices Isaias P. Dicdican and Antonio L. Villamor concurring.  
<sup>5</sup> *Rollo* (G.R. No. 182090), pp. 20-24; issued by Executive Secretary Eduardo R. Ermita.  
<sup>6</sup> *Id.* at 25; issued by Deputy Executive Secretary for Legal Affairs Manuel B. Gaite.

On October 16, 2003, Elizabeth Orola-Salabas, wife of Eleuterio, filed an Amended Criminal Complaint against **P/Insp. Dongail**, Manolo Escalante and fifteen other John Does for Kidnapping with Murder before the Municipal Trial Court (MTC) of Guihulngan, Negros Oriental. The complaint was docketed as Criminal Case No. 10-03-437. However, on January 13, 2004, the MTC issued a Resolution<sup>7</sup> dismissing the Amended Criminal Complaint for lack of factual and legal merit.

On March 1, 2004, Orola-Salabas filed another Amended Affidavit Complaint for Kidnapping with Murder before the Negros Oriental Provincial Prosecution Office against **P/Insp. Dongail**, Ramonito Estanislao, Manolo Escalante, Ronnie Herrera, ***Senior Police Officer (SPO) 2 Freddie Natividad, PCI Jimmy Fortaleza, Police Officer (PO) 1 Bernardo Cimatú, PO2 Allen Winston Hulleza, Insp. Jonathan Lorilla***, SPO1 Agustilo Hulleza, Jr., Lorraine Abay, July Flores, Carlo de los Santos, Mamerto Cañete, Elma Cañete, Bruno Cañete, Elson Cañete and Warlito Cañete. The Complaint was docketed as I.S. Case No. 2004-78. On August 9, 2004, Asst. Provincial Prosecutor Joseph A. Elmaco issued a Resolution finding probable cause against **P/Insp. Dongail** and Ramonito Estanislao and “15 other ‘John Does’ for the death of victim Eleuterio Salabas.” The case against respondents Manolo Escalante, Ronnie Herrera, SPO2 Freddie Natividad, ***SPO4 Jimmy Fortaleza, PO1 Bernard Cimatú, PO2 Allen Winston Hulleza, Inspector Jonathan Lorilla***, SPO1 Agustilo (SOLA) Hulleza, Jr., Lorraine ‘Lulu’ Abay, July ‘Kirhat’ Flores, Carlos de los Santos, Mamerto Cañete, Elma Cañete, Bruno Cañete, Elson Cañete, and Warlito Cañete were dismissed for insufficiency of evidence.

**P/Insp. Dongail** filed a Motion for Reconsideration. On October 1, 2004, Asst. Provincial Prosecutor Elmaco issued an Order discharging **P/Insp. Dongail** from the criminal complaint. An Information for Kidnapping with Murder was thereafter filed against Ramonito Estanislao and fifteen John Does before the Regional Trial Court of Guihulngan, Negros Oriental. The case was assigned to Branch 64 and docketed as Crim. Case No. 04-094-G.

On December 2, 2004, Orola-Salabas filed an Urgent Motion for Reinvestigation, praying for the inclusion in the Information of **P/Insp. Dongail**, Manolo Escalante, Ronnie Herrera, ***SPO2 Freddie Natividad, PCI Jimmy Fortaleza, PO1 Bernardo Cimatú, PO2 Allen Winston Hulleza, Insp. Jonathan Lorilla***, SPO1 Agustilo Hulleza, Jr., Lorraine Abay, July Flores, Carlo de los Santos, Mamerto Cañete, Elma Cañete, Bruno Cañete, Elson Cañete, and Warlito Cañete. The RTC issued an Order directing Asst. Provincial Prosecutor Macarieto I. Trayvilla to conduct the reinvestigation.

<sup>7</sup> Records, Folder 3, Annex “F.”

On December 13, 2004, the Department of Justice sent a letter directing the Negros Oriental Provincial Prosecution Office to forward the records of I.S. Case No. 2004-78 to the DOJ for automatic review.

On December 28, 2004, the Negros Oriental Provincial Prosecution Office, without conducting a reinvestigation, issued a Resolution affirming *in toto* the August 9, 2004 and October 1, 2004 Resolutions of Asst. Provincial Prosecutor Joseph A. Elmaco.

On January 24, 2005, Orola-Salabas filed an Urgent Motion to Compel Prosecutor Macareto I. Trayvilla to Conduct Reinvestigation. On January 27, 2005, the RTC issued an Order granting said Motion. Upon the failure of Prosecutor Trayvilla to conduct the reinvestigation, Orola-Salabas filed an Urgent Motion Directing Prosecutor Trayvilla to Explain Why He Should Not Be Cited For Contempt.

On October 2, 2006, Justice Secretary Raul Gonzalez issued the aforementioned Resolution modifying the August 9, 2004 resolution of the Negros Oriental Provincial Prosecution Office (which found probable cause against **P/Insp. Dongail** and **Estanislao** only and dismissed the case against the other respondents). The dispositive portion of the Resolution of the Secretary of Justice states:

WHEREFORE, premises considered, the assailed resolution is hereby MODIFIED. The Provincial Prosecutor of Negros Oriental is hereby ordered to file an amended Information for Kidnapping with Murder against the following respondents: P/INSP. CLARENCE DONGAIL, MANOLO G. ESCALANTE, RONNIE HERRERA, SPO2 FREDDIE NATIVIDAD, SPO4 JIMMY FORTALEZA, JULY (“Kirhat” dela Rosa) FLORES, CARLO “Caloy” DE LOS SANTOS, PO1 BERNARDO CIMATU, PO2 ALLEN WINSTON HULLEZA, INSP. JONATHAN [LORILLA], LORRAINE “LULU” ABAY, MANERTO, ELMA, ELSON ALL SURNAME(D) CAÑETE, and JUDE MONTILLA and report the action taken within ten (10) days from receipt hereof.<sup>8</sup>

***PCI Jimmy Fortaleza*** and ***SPO2 Freddie Natividad*** filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals challenging the October 2, 2006 Resolution of the Secretary of Justice on the following grounds: (1) the Secretary of Justice erred in entertaining the case despite the fact that complainant Orola-Salabas did not file a Petition for Review; (2) the August 9, 2004 resolution of the Negros Oriental Provincial Prosecution Office had already become final; and (3) ***PCI Jimmy Fortaleza*** and ***SPO2 Freddie Natividad*** were not informed of the alleged Petition for Review. The Petition was docketed as CA-G.R. CEB-SP No. 02203.

<sup>8</sup> Rollo (G.R. No. 182090), p. 37.

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In the meantime, **PS/Insp. Clarence Dongail, P/Insp. Jonathan Laurella, PO3 Allen Winston Hulleza and PO2 Bernardo Cimat** appealed the same October 2, 2006 Resolution of the Secretary of Justice before the Office of the President. The appeal was docketed as O.P. Case No. 06-J-380.

On August 16, 2007, the Court of Appeals rendered its Decision dismissing the Petition for *Certiorari* for lack of merit. The appellate court held that the Secretary of Justice has the power of supervision and control over prosecutors and therefore can *motu proprio* take cognizance of a case pending before or resolved by the Provincial Prosecution Office. The Court of Appeals also noted that the power of supervision and control over prosecutors applies not only in the conduct of the preliminary investigation, but also in the conduct of the reinvestigation. Pursuant to the Order of the RTC ordering reinvestigation, it is clear that the reinvestigation stage has not been terminated, and the power of control of the Secretary of Justice, allowing it to act on the reinvestigation *motu proprio*, continues to apply. Finally, since the case involves the exercise of the Secretary of Justice's power of control and does not involve a Petition for Review, the requirement of furnishing copies of said Petition for Review to the respondents do not apply in the case at bar.

***PCI Jimmy Fortaleza and SPO2 Freddie Natividad*** filed with this Court a Petition for Review under Rule 45 challenging the August 16, 2007 Decision of the Court of Appeals. The Petition was docketed as G.R. No. 179287.

On September 19, 2007, the Office of the President, through Executive Secretary Eduardo Ermita, rendered its Decision in O.P. Case No. 06-J-380 setting aside the October 2, 2006 Resolution of the Secretary of Justice. The pertinent portions of the Decision read:

Even if the DOJ has the power of control and supervision over its provincial prosecutor and any decision rendered by the latter may be reviewed by the former, there is yet no new decision in this case to be reviewed. The second investigation has yet to be commenced by the provincial prosecutor when the DOJ ordered the transmittal of the case for its automatic review. At the outset, DOJ's Resolution of 02 October 2006 was in defiance of the order of the court which had already acquired jurisdiction over the case. Besides, the DOJ should have exercised its automatic power of review after the October 1, 2004 Resolution of the Provincial Prosecutor of Negros Oriental and not after the proper Information was filed with court and the latter has properly acquired its jurisdiction over the case.

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WHEREFORE, premises considered, the 02 October 2006 Resolution of the Department of Justice is hereby set aside. The Provincial Prosecutor of Negros Oriental is hereby directed to comply



with the January 27, 2005 Order of the Regional Trial Court of Guihulngan, Negros Oriental and to immediately proceed with the reinvestigation of the case.<sup>9</sup>

On January 9, 2008, the Office of the President, through Deputy Executive Secretary Manuel B. Gaité, denied Orola-Salabas's Motion for Reconsideration.<sup>10</sup>

On March 31, 2008, Orola-Salabas filed with this Court a Petition for *Certiorari* assailing the Decision dated September 19, 2007 and Resolution dated January 9, 2007 of the Office of the President. The Petition was docketed as G.R. No. 182090.

On April 30, 2008, this Court issued a Resolution<sup>11</sup> in G.R. No. 179287 denying the Petition for Review for failure of petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision as to warrant the exercise of this Court's appellate jurisdiction.

On June 2, 2008, this Court resolved to consolidate G.R. No. 179287 with G.R. No. 182090.<sup>12</sup>

***PCI Jimmy Fortaleza*** and ***SPO2 Freddie Natividad*** did not file a Motion for Reconsideration of this Court's April 30, 2008 Resolution denying the Petition in G.R. No. 179287. Consequently, said Resolution of this Court has become final and executory. We shall therefore proceed to rule on the Petition in G.R. No. 182090.

In her Petition for *Certiorari*, Orola-Salabas assails the September 19, 2007 Decision and January 9, 2008 Resolution of the Office of the President on the following grounds:

I

PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN PROCEEDING WITH THE APPEAL AFTER THE REGIONAL TRIAL COURT HA[D] ACQUIRED JURISDICTION OVER THE CASE, AN ACT WHICH [WA]S CLEARLY AND UNMISTAKABLY OUTSIDE THEIR POWERS AS IT CONSTITUTE AN ENCROACHMENT UPON JUDICIAL POWER.

II

PUBLIC RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION IN DISREGARDING THE DECISION OF THE COURT

<sup>9</sup> Id. at 23-24.

<sup>10</sup> Id. at 25.

<sup>11</sup> *Rollo* (G.R. No. 179287), pp. 214-215.

<sup>12</sup> *Rollo* (G.R. No. 182090), p. 85.

OF APPEALS UPHOLDING THE POWER AND AUTHORITY OF THE SECRETARY OF JUSTICE IN ISSUING HIS RESOLUTION INDICTING PRIVATE RESPONDENTS OF THE CRIME CHARGED.<sup>13</sup>

Orola-Salabas assert the settled doctrine in the leading case of *Crespo v. Mogul*<sup>14</sup> that:

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

Thus, according to Orola-Salabas, when the Informations were filed by the Provincial Prosecutor of Negros Oriental in the RTC of Guihulngan City, Negros Oriental, Branch 64, in compliance with the October 2, 2006 Resolution of the Secretary of Justice, the RTC acquired jurisdiction over the case to the exclusion of all other courts or agencies.

We disagree with petitioner on this point. In *People v. Espinosa*,<sup>15</sup> we stressed that the court does not lose control of the proceedings by reason of a reinvestigation or review conducted by either the DOJ or the Office of the President. On the contrary, the court, in the exercise of its discretion, may grant or deny a motion to dismiss based on such reinvestigation or review:

Under Section 11(c) of Rule 116 of the Rules of Court, the arraignment shall be suspended for a period not exceeding 60 days when a reinvestigation or review is being conducted at either the Department of Justice or the Office of the President. However, we should stress that the court does not lose control of the proceedings by reason of such review. Once it had assumed jurisdiction, it is not handcuffed by any resolution of the reviewing prosecuting authority. Neither is it deprived of its jurisdiction by such resolution. The principles established in *Crespo v. Mogul* still stands, as follows:

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it

<sup>13</sup> Id. at 10.

<sup>14</sup> 235 Phil. 465, 476 (1987).

<sup>15</sup> 456 Phil. 507, 516-517 (2003).

and require that the trial on the merits proceed for the proper determination of the case.<sup>16</sup>

In her second Assignment of Error, Orola-Salabas claims that the Office of the President, through Executive Secretary Ermita and Deputy Executive Secretary Gaité, acted in grave abuse of discretion in issuing the assailed September 19, 2007 Decision and January 9, 2008 Resolution as it disregarded the August 16, 2007 Decision of the Court of Appeals which, incidentally, has been affirmed by this Court in its final and executory April 30, 2008 Resolution in G.R. No. 179287.

The second assignment of error in effect argues that the determination by the Court of Appeals on the question of the validity of the Secretary of Justice Resolution should be considered the *law of the case* and should remain established in all other steps of the prosecution process. The doctrine of the *law of the case* is well settled in jurisprudence:

Law of the case has been defined as the opinion delivered on a former appeal, and means, more specifically, that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

The concept of law of the case is well explained in *Mangold v. Bacon*, an American case, thusly:

The general rule, nakedly and boldly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and **remain the law of the case in all other steps below or above on subsequent appeal**. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, reargitation, reexamination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigants were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.<sup>17</sup>

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<sup>16</sup>

Id.

<sup>17</sup>*Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corporation*, G.R. No. 160758, January 15, 2014, 713 SCRA 292, 308-309.

The doctrine of the *law of the case* applies even if the prior resort to the appellate court is in a *certiorari* proceeding,<sup>18</sup> as in the case at bar. If this doctrine were to be applied, the previous opinion by the Court of Appeals – that the October 2, 2006 Resolution of the Secretary of Justice was valid should govern on subsequent appeal.

However, the doctrine of the *law of the case* requires that the appeal be that of the same parties, and that the pronouncement by the appellate court be with full opportunity to be heard accorded to said parties:

The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages. But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.<sup>19</sup>

G.R. No. 179287 and G.R. No. 182090 do not, however, involve the same parties. Of the fifteen persons required by the October 2, 2006 Resolution of the Secretary of Justice to be included in the Information for Kidnapping and Murder, only *Jimmy Fortaleza* and *Freddie Natividad* filed a Petition for *Certiorari* with the Court of Appeals, were heard thereon, and whose arguments were considered in the Resolution dated April 30, 2008 in G.R. No. 179287. Clarence Dongail, Jonathan Lorilla, Allen Winston Hulleza and Bernardo Cimat, on the other hand, appealed to the Office of the President, and are the parties in G.R. No. 182090, to the exclusion of *Jimmy Fortaleza* and *Freddie Natividad* and the other respondents. The doctrine of the law of the case does not, therefore, apply here in G.R. No. 182090.

Corollary thereto, however, the Office of the President cannot order the reinvestigation of the charges with respect to *Jimmy Fortaleza*, *Freddie Natividad*, and the nine other accused who did not participate in the appeal before the Office of the President, namely: Jimmy Fortaleza, Freddie Natividad, Manolo G. Escalante, Ronnie Herrera, July (“Kirhat” Dela Rosa) Flores, Carlo “Caloy” De Los Santos, Lorraine “Lulu” Abay, Manerto Cañete, Elma Cañete, Elson Cañete, and Jude Montilla. Due process prevents the grant of additional awards to parties who did not appeal<sup>20</sup> or who resorted to other remedies and such additional award constitutes grave

<sup>18</sup> *Banco De Oro-EPCI, Inc. v. Tansipek*, 611 Phil. 90, 99 (2009).

<sup>19</sup> *Development Bank of the Philippines v. Guariña Agricultural and Realty Development Corporation*, supra note 17 at 309.

<sup>20</sup> *See Daabay v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 199890, August 19, 2013.

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abuse of discretion amounting to lack or excess of jurisdiction on the part of the Office of the President.

On a more substantive point, we cannot adhere to the position of the Office of the President that the entire case should be remanded to the Provincial Prosecutor of Negros Oriental on the ground that the Secretary of Justice may not exercise its power to review where there was allegedly no new resolution rendered by the local prosecutor. As can be gleaned from the records, the Secretary of Justice conducted an automatic review of the Provincial Prosecutor's affirmance of former resolutions issued by previous investigating prosecutors without conducting an actual reinvestigation of the case.

It is established in jurisprudence that the Secretary of Justice has the statutory power of control and supervision over prosecutors. In the recent case of *Department of Justice v. Alaon*,<sup>21</sup> we reiterated that:

There is no quarrel about the Secretary of Justice's power of review over the actions of his subordinates, specifically public prosecutors. This power of review is encompassed in the Secretary of Justice's authority of supervision and control over the bureaus, offices, and agencies under him, subject only to specified guidelines.

Chapter 7, section 38, paragraph 1 of Executive Order No. 292 or The Administrative Code of 1987, defines the administrative relationship that is **supervision and control**:

**SECTION 38. Definition of Administrative Relationships.** — Unless otherwise expressly stated in the Code or in other laws defining the special relationships of particular agencies, administrative relationships shall be categorized and defined as follows:

(1) *Supervision and Control.* — Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; **direct the performance of duty**; restrain the commission of acts; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "control" shall encompass supervision and control as defined in this paragraph.

In *Noblejas v. Judge Salas*, we defined control as the power (of the department head) to alter, modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. The power of control implies

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<sup>21</sup>

G.R. No. 189596, April 23, 2014, 723 SCRA 580, 589-591.

the right of the President (and, naturally, of his *alter ego*) to **interfere** in the exercise of such discretion as may be vested by law in the officers of the national government, as well as to act in lieu of such officers. (Citations omitted.)

Moreover, Section 4, Rule 112 of the Rules of Court recognizes the Secretary of Justice's power to review the actions of the investigating prosecutor, even *motu proprio*, to wit:

SECTION 4. *Resolution of Investigating Prosecutor and its Review.* — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe **or *motu proprio***, the **Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor**, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied.)

Verily, the Secretary of Justice was empowered to review the actions of the Provincial Fiscal during the preliminary investigation or the

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reinvestigation. We note by analogy, however, that in *Department of Justice v. Alaon*, the Court declared that respondents should be given due notice of the review proceedings before the Secretary of Justice and be afforded adequate opportunity to be heard therein.

In the case at bar, we find that there is nothing on record to show that respondents were given notice and an opportunity to be heard before the Secretary of Justice. For this reason, we remand the case to the Secretary of Justice with respect to respondents Dongail, Lorilla, Hulleza, and Cimatu for further proceedings, with the caveat that any resolution of the Secretary of Justice on the matter shall be subject to the approval of the trial court.

**WHEREFORE**, the Decision of the Office of the President dated September 19, 2007 and its Resolution dated January 9, 2008 are hereby **SET ASIDE**. The case is **REMANDED** to the Secretary of Justice for further proceedings with respect to respondents Clarence Dongail, Jonathan Lorilla, Allen Winston Hulleza and Bernardo Cimatu.

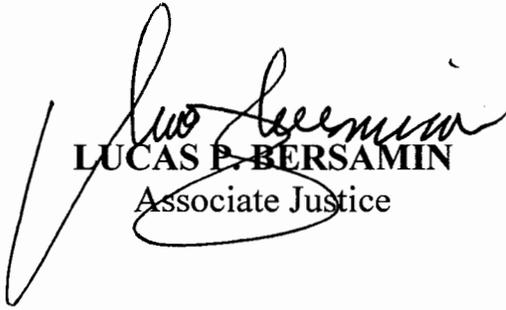
No pronouncement as to costs.

**SO ORDERED.**

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

**CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice

