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People vs Lacson : 149453 : October 7, 2003 : J. Callejo Sr : En Banc 0 0 MicrosoftInternetExplorer4 /\* Style Definitions \*/ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";} // Change to 1 to have "Next Hit" go to the next document // after the last hit in the current document fAutoNextDoc = 0; nHit = 0; maxHits = 2; var simpleNav = 1; var browser = navigator.appName; var version = parseInt(navigator.appVersion); if ((browser.indexOf("Microsoft") != -1) || (version >= 4)) simpleNav = 0; function old\_gotoHit(where) { window.location.hash = where; } function findLink(links, name) { if (links.namedItem) return links.namedItem(name); for (i = 0; i 1) return; if (a.y) { // Netscape window.scrollTo(0, a.y); } else { // IE window.scrollTo(0, a.offsetTop - a.offsetHeight + a.offsetParent.offsetTop); } var s = document.body.createTextRange(); if (s != null) { s.moveToElementText(a); s.moveEnd("word"); s.select(); s.scrollIntoView(); } } function gotoNthHit(n) { nHit = n; if ((n > 1) && (n == maxHits)) gotoHit('hit\_last'); else if (n == 0) old\_gotoHit('hit0'); else gotoHit('hit' + n); } function nextHit() { if (nHit 0) { gotoNthHit(nHit-1); } }

Remedial Law: Sec. 8, Rule 117, Revised Rules of Criminal Procedures; Prospective application of 2-year time bar to refile criminal cases provisionally dismissed

**EN BANC**

[G.R. No. 149453. October 7, 2003]

PEOPLE OF THE PHILIPPINES, THE SECRETARY OF JUSTICE, DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE, CHIEF STATE PROSECUTOR JOVENCITO ZUÑO, STATE PROSECUTORS PETER L. ONG and RUBEN A. ZACARIAS; 2ND ASSISTANT CITY PROSECUTOR CONRADO M. JAMOLIN and CITY PROSECUTOR OF QUEZON CITY CLARO ARELLANO, petitioners, vs. PANFILO M. LACSON, respondent.

**RESOLUTION****CALLEJO, SR., J.:**

Before the Court are the following motions of the respondent, to wit: (a) Omnibus Motion;[1] (b) Motion for Reconsideration;[2] (c) Supplement to Motion for Reconsideration;[3] (d) Motion To Set for Oral Arguments.[4]

**The Omnibus Motion**

The respondent seeks the reconsideration of the April 29, 2003 Resolution of this Court which granted the petitioners' motion for reconsideration. The respondent thereafter prays to allow Associate Justices Renato C. Corona, Ma. Alicia Austria-Martinez, Conchita C. Morales, Romeo J. Callejo, Sr., and Adolfo S. Azcuna to voluntarily inhibit themselves or, absent their consent, rule that such inhibition is in order and to recuse them from further deliberating, discussing or, in any manner, participating in the resolution of the Motion for

Reconsideration and the Supplement to Motion for Reconsideration. The respondent points out that the aforementioned members of the Court were appointed by President Gloria Macapagal-Arroyo after the February 19, 2002 oral arguments and after the case at bar was submitted for the decision of the Court. He asserts that although A.M. No. 99-8-09-SC[5] specifically provides that it applies only to the divisions of the Court, it should likewise apply to this case, in light of the April 1, 2003 Resolution of this Court which set aside its Resolution dated May 28, 2002, apart from the constitutional issues raised by the respondent in his motion for reconsideration and its supplement. As such, according to the respondent, the instant case should be unloaded by Justice Callejo, Sr. and re-raffled to any other member of the Court.

The Court resolves to deny the respondent's motion for lack of merit.

The records show that as early as May 24, 2002, the respondent filed an urgent motion for the recusal of Justices Renato C. Corona and Ma. Alicia Austria-Martinez for the reason that they were appointed to the Court after the February 19, 2002 oral arguments and did not participate in the integral portions of the proceedings. Justices Corona and Austria-Martinez refused to inhibit themselves and decided to participate in the deliberation on the petition.[6] On March 18, 2003, the respondent filed a motion with the Court for the recusal of Justice Romeo J. Callejo, Sr. on account of his voluntary inhibition when the case was pending before the Court of Appeals.

On March 25, 2003, this Court issued a resolution denying the respondent's Motion dated March 18, 2003. The respondent thereafter filed his motion for reconsideration of the April 1, 2003 Resolution of the Court in which he prayed, inter alia, for the inhibition of Justice Callejo, Sr. under A.M. No. 99-8-09-SC and that the case be re-raffled to another member of the Court who had actually participated in the deliberation and the rendition of its May 28, 2002 Resolution. The respondent likewise sought the inhibition of Justices Conchita C. Morales and Adolfo S. Azcuna, again for the reason that they were appointed to the Court after the oral arguments on February 19, 2002 and after the case had already been submitted for decision.

On April 29, 2003, this Court issued a resolution denying the aforesaid motions of the respondent.[7] The Court ruled that A.M. No. 99-8-09-SC is applicable only to cases assigned to the divisions of the Court:

The respondent's reliance on Supreme Court Circular No. 99-8-09 is misplaced. As admitted by the respondent, the said circular is applicable only to motions for reconsideration in cases assigned to the Divisions of the Court. For cases assigned to the Court En Banc, the policy of the Court had always been and still is, if the ponente is no longer with the Court, his replacement will act upon the motion for reconsideration of a party and participate in the deliberations thereof. This is the reason why Justice Callejo, Sr. who had replaced retired Justice De Leon, prepared the draft of the April 1, 2003 Resolution of the Court.[8]

The Court also ruled that there was no need for its newest members to inhibit themselves from participating in the deliberation of the respondent's Motion for Reconsideration:

Although Justices Conchita Carpio-Morales, Romeo J. Callejo, Sr., and Adolfo S. Azcuna were not yet members of the Court during the February 18, 2002[9] oral arguments before the Court, nonetheless they were not disqualified to participate in the deliberations on the petitioner's motion for reconsideration of the May 28, 2002 Resolution of the Court or of the instant motion for reconsideration. Neither is Justice Callejo, Sr. disqualified to prepare the resolution of the Court on the motion for reconsideration of the respondent. When the Court deliberated on petitioners' motion for reconsideration, Justices Conchita Carpio-Morales, Romeo J. Callejo, Sr. and Adolfo S. Azcuna were already members of the Court.

It bears stressing that transcripts of stenographic notes taken during the February 18, 2002 hearing and oral

arguments of the parties are parts of the records of this case. Said transcripts are available to the parties or to any member of the Court. Likewise, Attys. Rene A.V. Saguisag and Felix Carao, Jr. may not yet have been the counsel of the respondent on February 18, 2002 but by reading the said transcripts and the records of this case they are informed of what transpired during the hearing and oral arguments of the parties.[10]

It is thus clear that the grounds cited by the respondent in his omnibus motion had already been passed upon and resolved by this Court. The respondent did not make any new substantial arguments in his motion to warrant a reconsideration of the aforesaid resolutions.

Besides, the respondent sought the inhibition of Justices Conchita C. Morales and Adolfo S. Azcuna only after they had already concurred in the Court's Resolution dated April 1, 2003. Case law has it that a motion for disqualification must be denied when filed after a member of the Court has already given an opinion on the merits of the case, the rationale being that a litigant cannot be permitted to speculate upon the action of the Court, only to raise an objection of this sort after a decision has been rendered.[11]

The Motion to Set the Case for

Oral Arguments

The Court denies the motion of the respondent. The parties have already extensively discussed the issues involved in the case. The respondent's motion for reconsideration consists of no less than a hundred pages, excluding the supplement to his motion for reconsideration and his reply to the petitioners' comment on his motion. There is no longer a need to set the instant case for oral arguments.

The Issue as to the Application of

the Time-bar under Section 8,

Rule 117 of the Revised Rules of

Criminal Procedure – Whether

Prospective or Retroactive

The respondent seeks the reconsideration of the April 1, 2003 Resolution of the Court and thereafter reinstate its Resolution of May 28, 2002.

He asserts that pursuant to a long line of jurisprudence and a long-standing judicial practice in applying penal law, Section 8, Rule 117 of the Revised Rules of Criminal Procedure (RRCP) should be applied prospectively and retroactively without reservations, only and solely on the basis of its being favorable to the accused. He asserts that case law on the retroactive application of penal laws should likewise apply to criminal procedure, it being a branch of criminal law. The respondent insists that Section 8 was purposely crafted and included as a new provision to reinforce the constitutional right of the accused to a speedy disposition of his case. It is primarily a check on the State to prosecute criminal cases diligently and continuously, lest it loses its right to prosecute the accused anew. The respondent argues that since Section 8 is indubitably a rule of procedure, there can be no other conclusion: the rule should have retroactive application, absent any provision therein that it should be applied prospectively. Accordingly, prospective application thereof would in effect give the petitioners more than two years from March 29, 1999 within which to revive the criminal cases, thus violating the respondent's right to due process and equal protection of the law.

The respondent asserts that Section 8 was meant to reach back in time to provide relief to the accused. In this case, the State had been given more than sufficient opportunity to prosecute the respondent anew after the March

29, 1999 dismissal of the cases by then Judge Wenceslao Agnir, Jr. and even before the RRCP took effect on December 1, 2000. According to the respondent, the petitioners filed the Informations with the RTC in Criminal Cases Nos. 01-101102 to 01-101112 beyond the two-year bar, in violation of his right to a speedy trial, and that such filing was designed to derail his bid for the Senate.

In their comment on the respondent's motions, the petitioners assert that the prospective application of Section 8 is in keeping with Section 5(5), Article VIII of the 1987 Constitution, which provides in part that the rules of procedure which the Court may promulgate shall not diminish, increase or modify substantial rights. While Section 8 secures the rights of the accused, it does not and should not preclude the equally important right of the State to public justice. If such right to public justice is taken away, then Section 8 can no longer be said to be a procedural rule. According to the petitioners, if a procedural rule impairs a vested right, or would work injustice, the said rule may not be given a retroactive application. They contend that the right of the accused to a speedy trial or disposition of the criminal cases applies only to outstanding and pending cases and not to cases already dismissed. The petitioners assert that the "refiling of the cases" under Section 8 should be taken to mean as the filing of the criminal complaint with the appropriate office for the purpose of conducting a preliminary investigation, and not the actual filing of the criminal complaint or information in court for trial. Furthermore, according to the petitioners, the offended parties must be given notices of the motion for provisional dismissal of the cases under Section 8 since the provision so expressly states. Thus, if the requisite notices to the heirs of the deceased would be taken into consideration, the two-year period had not yet even commenced to run.

In his consolidated reply to the comment of the petitioners, the respondent asserts that the State is proscribed from refileing a criminal case if it can be shown that the delay resulted in a violation of the right of the accused to due process. In this case, there was an inordinate delay in the revival of the cases, considering that the witnesses in the criminal cases for the State in March 1999 are the same witnesses in 2001. The State had reasonable opportunity to refile the cases before the two-year bar but failed to do so because of negligence; and perhaps institutional indolence. Contrary to the petitioners' contention, the respondent posits that the revival of the cases contemplated in Section 8 refers to the filing of the Informations or complaints in court for trial. The operational act then is the refileing of the Informations with the RTC, which was done only on June 6, 2001, clearly beyond the two-year bar.

The Court finds the respondent's contentions to be without merit.

First. The Court approved the RRCP pursuant to its power under Article VIII, Section 5, paragraph 5 of the Constitution which reads:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

The Court is not mandated to apply Section 8 retroactively simply because it is favorable to the accused. It must be noted that the new rule was approved by the Court not only to reinforce the constitutional right of the accused to a speedy disposition of the case. The time-bar under the new rule was fixed by the Court to excise the malaise that plagued the administration of the criminal justice system for the benefit of the State and the accused; not for the accused only. The Court emphasized in its assailed resolution that:

In the new rule in question, as now construed by the Court, it has fixed a time-bar of one year or two years for the revival of criminal cases provisionally dismissed with the express consent of the accused and with a priori notice

to the offended party. The time-bar may appear, on first impression, unreasonable compared to the periods under Article 90 of the Revised Penal Code. However, in fixing the time-bar, the Court balanced the societal interests and those of the accused for the orderly and speedy disposition of criminal cases with minimum prejudice to the State and the accused. It took into account the substantial rights of both the State and of the accused to due process. The Court believed that the time limit is a reasonable period for the State to revive provisionally dismissed cases with the consent of the accused and notice to the offended parties. The time-bar fixed by the Court must be respected unless it is shown that the period is manifestly short or insufficient that the rule becomes a denial of justice.[12]

In criminal litigations concerning constitutional issue claims, the Court, in the interest of justice, may make the rule prospective where the exigencies of the situation make the rule prospective. The retroactivity or non-retroactivity of a rule is not automatically determined by the provision of the Constitution on which the dictate is based. Each constitutional rule of criminal procedure has its own distinct functions, its own background or precedent, and its own impact on the administration of justice, and the way in which these factors combine must inevitably vary with the dictate involved.[13]

Matters of procedure are not necessarily retrospective in operation as a statute.[14] To paraphrase the United States Supreme Court per Justice Benjamin Cardozo, the Court in defining the limits of adherence may make a choice for itself between the principle of forward operation and that of relating forward.[15]

The Court approved Section 8 pursuant to its power under Article VIII, Section 5, paragraph 5 of the Constitution. This constitutional grant to promulgate rules carries with it the power, inter alia, to determine whether to give the said rules prospective or retroactive effect. Moreover, under Rule 144 of the Rules of Court, the Court may not apply the rules to actions pending before it if in its opinion their application would not be feasible or would work injustice, in which event, the former procedure shall apply.[16]

The absence of a provision in Section 8 giving it prospective application only does not proscribe the prospective application thereof; nor does it imply that the Court intended the new rule to be given retroactive and prospective effect. If the statutory purpose is clear, the provisions of the law should be construed as is conducive to fairness and justice, and in harmony with the general spirit and policy of the rule. It should be construed so as not to defeat but to carry out such end or purpose.[17] A statute derives its vitality from the purpose for which it is approved. To construe it in a manner that disregards or defeats such purpose is to nullify or destroy the law.[18] In *Cometa v. Court of Appeals*,[19] this Court ruled that “the spirit rather than the letter of the statute determines its construction; hence, a statute must be read according to its spirit or intent.”[20] While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to the “letter that killeth” but to the “spirit that vivifieth, to give effect to the lawmaker’s will.”[21]

In this case, when the Court approved Section 8, it intended the new rule to be applied prospectively and not retroactively, for if the intention of the Court were otherwise, it would defeat the very purpose for which it was intended, namely, to give the State a period of two years from notice of the provisional dismissal of criminal cases with the express consent of the accused. It would be a denial of the State’s right to due process and a travesty of justice for the Court to apply the new rule retroactively in the present case as the respondent insists, considering that the criminal cases were provisionally dismissed by Judge Agnir, Jr. on March 29, 1999 before the new rule took effect on December 1, 2000. A retroactive application of the time-bar will result in absurd, unjust and oppressive consequences to the State and to the victims of crimes and their heirs.

Consider this scenario: the trial court (RTC) provisionally dismissed a criminal case with the express consent of

the accused in 1997. The prosecution had the right to revive the case within the prescriptive period, under Article 90 of the Revised Penal Code, as amended. On December 1, 2000, the time-bar rule under Section 8 took effect, the prosecution was unable to revive the criminal case before then.

If the time-bar fixed in Section 8 were to be applied retroactively, this would mean that the State would be barred from reviving the case for failure to comply with the said time-bar, which was yet to be approved by the Court three years after the provisional dismissal of the criminal case. In contrast, if the same case was dismissed provisionally in December 2000, the State had the right to revive the same within the time-bar. In fine, to so hold would imply that the State was presumed to foresee and anticipate that three years after 1997, the Court would approve and amend the RRCP. The State would thus be sanctioned for its failure to comply with a rule yet to be approved by the Court. It must be stressed that the institution and prosecution of criminal cases are governed by existing rules and not by rules yet to exist. It would be the apex of injustice to hold that Section 8 had a platonic or ideal existence before it was approved by the Court. The past cannot be erased by a capricious retroactive application of the new rule.

In holding that the petitioners had until December 1, 2002 within which to revive the criminal cases provisionally dismissed by Judge Agnir, Jr. on March 29, 1999, this Court explained, thus:

The Court agrees with the petitioners that to apply the time-bar retroactively so that the two-year period commenced to run on March 31, 1999 when the public prosecutor received his copy of the resolution of Judge Agnir, Jr. dismissing the criminal cases is inconsistent with the intendment of the new rule. Instead of giving the State two years to revive provisionally dismissed cases, the State had considerably less than two years to do so. Thus, Judge Agnir, Jr. dismissed Criminal Cases Nos. Q-99-81679 to Q-99-81689 on March 29, 1999. The new rule took effect on December 1, 2000. If the Court applied the new time-bar retroactively, the State would have only one year and three months or until March 31, 2001 within which to revive these criminal cases. The period is short of the two-year period fixed under the new rule. On the other hand, if the time limit is applied prospectively, the State would have two years from December 1, 2000 or until December 1, 2002 within which to revive the cases. This is in consonance with the intendment of the new rule in fixing the time-bar and thus prevent injustice to the State and avoid absurd, unreasonable, oppressive, injurious, and wrongful results in the administration of justice.

The period from April 1, 1999 to November 30, 1999[22] should be excluded in the computation of the two-year period because the rule prescribing it was not yet in effect at the time and the State could not be expected to comply with the time-bar. It cannot even be argued that the State waived its right to revive the criminal cases against respondent or that it was negligent for not reviving them within the two-year period under the new rule. As the United States Supreme Court said, per Justice Felix Frankfurter, in *Griffin v. People*, 351 US 12 (1956):

We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights ...

The two-year period fixed in the new rule is for the benefit of both the State and the accused. It should not be emasculated and reduced by an inordinate retroactive application of the time-bar therein provided merely to benefit the accused. For to do so would cause an “injustice of hardship” to the State and adversely affect the administration of justice in general and of criminal laws in particular.[23]

Further quoting Justice Felix Frankfurter’s opinion in *Griffin v. People*,[24] he said, “it is much more conducive to law’s self-respect to recognize candidly the considerations that give prospective content to a new pronouncement of law. That this is consonant with the spirit of our law and justified by those considerations of reason which should dominate the law has been luminously expounded by Mr. Justice Cardozo shortly before he

came here and in an opinion which he wrote for the Court.”

Parenthetically, the respondent himself admitted in his motion for reconsideration that Judge Agnir, Jr. could not have been expected to comply with the notice requirement under the new rule when it yet had to exist:

99. Respondent submits that the records are still in the same state of inadequacy and incompleteness. This however is not strange considering that Section 8, Rule 117 had not existed on March 29, 1999, when the criminal cases were dismissed, and then Judge Agnir did not have its text to guide his actions. How could the good judge have complied with the mandate of Section 8, Rule 117 when it yet had to exist?[25]

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. In that sense and to that extent, procedural laws are retroactive.[26] Criminal Cases Nos. Q-99-81679 to Q-99-81689 had long been dismissed by Judge Agnir, Jr. before the new rule took effect on December 1, 2000. When the petitioners filed the Informations in Criminal Cases Nos. 01-101102 to 01-101112 on June 6, 2001, Criminal Cases Nos. Q-99-81679 and Q-99-81689 had long since been terminated. The two-year bar in the new rule should not be reckoned from the March 29, 1999 dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 but from December 1, 2000 when the new rule took effect. While it is true that the Court applied Section 8 of Rule 110[27] of the RRCPP retroactively, it did so only to cases still pending with this Court and not to cases already terminated with finality.

The records show that after the requisite preliminary investigation conducted by the petitioners in accordance with existing rules, eleven Informations in Criminal Cases Nos. 01-101102 to 01-101112 were filed with the RTC on June 6, 2001, very well within the time-bar therefor. The respondent cannot argue that his right to due process and to a speedy disposition of the cases as enshrined in the Constitution had been violated.[28]

The respondent’s complaint that he was being singled out by the prospective application of the new rule simply because before the Court issued its April 1, 2003 Resolution, he announced his candidacy for the presidency of the Republic for the 2004 elections has no factual basis whatsoever.[29] The bare and irrefutable fact is that it was in this case where the issue of the retroactive/prospective application of the new rule was first raised before the Court. The ruling of the Court in its April 1, 2003 Resolution and its ruling today would be the same, regardless of who the party or parties involved are, whether a senator of the Republic or an ordinary citizen.

The respondent’s contention that the prospective application of the new rule would deny him due process and would violate the equal protection of laws is barren of merit. It proceeds from an erroneous assumption that the new rule was approved by the Court solely for his benefit, in derogation of the right of the State to due process. The new rule was approved by the Court to enhance the right of due process of both the State and the accused. The State is entitled to due process in criminal cases as much as the accused.

Due process has never been and perhaps can never be precisely defined. It is not a technical conception with a fixed content unrelated to time, place and circumstances. The phrase expresses the requirement of fundamental fairness, a requisite whose meaning can be as opaque as its importance is lofty.[30] In determining what fundamental fairness consists of in a particular situation, relevant precedents must be considered and the interests that are at stake; private interests, as well as the interests of the government must be assessed. In this case, in holding that the new rule has prospective and not retroactive application, the Court took into consideration not only the interests of the respondent but all other accused, whatever their station in life may be. The interest of the State in the speedy, impartial and inexpensive disposition of criminal cases was likewise considered.

The Respondent Failed to Comply

with the Essential Prerequisites of

## Section 8, Rule 117 of the Revised

### Rules of Criminal Procedure

The respondent argues that the issue involved in the Court of Appeals is entirely different from the issue involved in the present recourse; hence, any admissions he made in the court below are not judicial admissions in this case. He asserts that the issue involved in the CA was whether or not he was placed in double jeopardy when he was charged with murder in Criminal Cases Nos. 01-101102 to 01-101112 despite the dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689; whereas the issue in this Court is whether the prosecution of Criminal Cases Nos. 01-101102 to 01-101112 was barred by Section 8, Rule 117 of the RRCP. The respondent avers that the proceedings in the appellate court are different from those in this Court.

The respondent posits that this Court erred in giving considerable weight to the admissions he made in his pleadings and during the proceedings in the CA. He stresses that judicial admissions may only be used against a party if such admissions are (a) made in the course of the proceedings in the same case; and (b) made regarding a relevant fact, pursuant to Section 4, Rule 129 and Section 26, Rule 130 of the Rules of Evidence. He contends that contrary to the ruling of the Court, when he filed his motion for the judicial determination of probable cause in Criminal Cases Nos. Q-99-81679 to Q-99-81689, he thereby prayed for the dismissal of the said cases. His motion carried with it, at the very least, the prayer for the dismissal of the criminal cases. Absent a finding of probable cause, Judge Agnir, Jr. had no recourse but to dismiss the criminal cases. Moreover, the respondent avers that his motion included the general prayer “for such other reliefs as may be equitable in the premises.” The respondent also points out that the public prosecutor agreed to the averments in his motion as the latter did not even file any motion for the reconsideration of Judge Agnir, Jr.’s order dismissing the cases.

The respondent further contends that the Court is not a trier of facts. It has no means to ascertain or verify as true the contrasting claims of the parties on the factual issues, a function best left to the trial court as the trier of facts. He posits that there is a need for the case to be remanded to the RTC to enable him to present evidence on whether or not Judge Agnir, Jr. complied with the notice requirements of Section 8. Echoing the May 28, 2002 ruling of this Court, the respondent contends that it is not fair to expect the element of notice under Section 8 to be litigated before Judge Agnir, Jr., for the said rule was not yet in existence at the time he filed his motion for a determination of probable cause.

The respondent avers that the requirement for notices to the offended parties under Section 8 is a formal and not an essential requisite. In criminal cases, the offended party is the State and the role of the private complainant is limited to the determination of the civil liability of the accused. According to the respondent, notice to the prosecution provides sufficient safeguard for the private complainant to recover on the civil liability of the accused based on the delicts; after all, the prosecution of the offense is under the control and direction of the public prosecutor.

The contentions of the respondent have no merit.

First. The issue posed by the respondent in the CA and in this Court are the same. To recall, in Civil Case No. 01-100933,[31] the respondent[32] sought injunctive relief from the RTC of Manila on his claim that in conducting a preliminary investigation in Criminal Cases Nos. 01-101102 to 01-101112, the petitioners thereby placed him in double jeopardy under Section 7, Rule 117 of the RRCP.[33] When the RTC denied his plea for injunctive relief, the respondent filed his petition for certiorari in the CA, again invoking his right against double jeopardy, praying that:

13. Inasmuch as the case subject of the “preliminary investigation” was dismissed for the reasons mentioned,

there currently exists no complaint upon which a valid investigation can be had in light of the clear provisions of Rule 110 which requires the existence of a “sworn written statement charging a person with an offense” as basis for the commencement of a preliminary investigation under Rule 112.

For petitioner, the investigation covers exactly the same offenses over which he had been duly arraigned and a plea validly entered before the Sandiganbayan (in Criminal Cases Nos. 23047 to 57) before its remand to the QC RTC. Hence, to proceed therewith on similar charges will put him in jeopardy of being twice punished therefor (Article III, §21, Constitution).[34]

The respondent (petitioner therein) contended that the dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 by Judge Agnir, Jr. amounted to a judgment of acquittal; hence, he could no longer be charged and prosecuted anew for the same offense without violating his right against double jeopardy. However, the respondent filed a second amended petition wherein he invoked for the first time Section 8 of Rule 117 of the RRCP:

(e) the new criminal cases for Murder filed by respondents against petitioner and the other accused on June 6, 2001 (docketed as Criminal Cases Nos. 01-101102 to 01-101112) and pending before respondent Judge Yadao (Annex B) is dismissible on its face as they involve exactly the same accused, facts, and offenses which had previously been dismissed by the QC RTC in Criminal Cases Nos. Q-99-81679 to 89 on March 29, 1999, hence, can no longer be revived two (2) years after such dismissal in accordance with the clear provisions of Section 8, Rule 117.[35]

Indeed, the CA granted the respondent’s petition based on Section 8, Rule 117 of the RRCP. In this case, the respondent invoked the same rule and the Constitution. Thus, during the oral arguments in this Court, the respondent, through counsel, admitted that he was indeed invoking Section 8 anew and the provisions of the Constitution on double jeopardy:

**JUSTICE PANGANIBAN:**

You are saying that Sen. Lacson can no longer be prosecuted forever for that crime, for the killing of the 11 in 1995?

**ATTY. FORTUN:**

That is my submission, Your Honor.

**JUSTICE PANGANIBAN:**

Let us see your reason for it?

**ATTY. FORTUN:[36]**

First, are you saying that double jeopardy applies or not?

**JUSTICE PANGANIBAN:[37]**

Allow me to qualify the effects of double jeopardy occur with permanent dismissal that is my submission.

**ATTY. FORTUN:[38]**

No, no, I am not talking of the effects, I am talking of the doctrine, you are not invoking the doctrine of double jeopardy?

**ATTY. FORTUN:**

Your Honor, double jeopardy does not apply Section 8, 117 they are (interrupted)

**JUSTICE PANGANIBAN:**

That is right.

**ATTY. FORTUN:**

They are two different claims.

**JUSTICE PANGANIBAN:**

That is what I am trying to rule out so that we do not have to discuss it.

**ATTY. FORTUN:**

Very well, Your Honor.

**JUSTICE PANGANIBAN:**

You are not invoking double jeopardy?

**ATTY. FORTUN:**

As I mentioned we are saying that the effects of a permanent dismissal vest the effects (interrupted)

**JUSTICE PANGANIBAN:**

No, I am not talking of the effects, I am asking about the application, you are not asking the Court to apply the doctrine of double jeopardy to prevent a prosecution of Mr. Lacson?

**ATTY. FORTUN:**

Because the element of double jeopardy cannot apply 8, 117.

**JUSTICE PANGANIBAN:**

So, the answer is yes?

**ATTY. FORTUN:**

No, Your Honor, we were saying that precisely a permanent dismissal vests the rights of double jeopardy upon the accused who invokes it.

**JUSTICE PANGANIBAN:**

What you are saying is the effects, I am not asking about the effects, I will ask that later.

**ATTY. FORTUN:**

They are two different (interrupted)

**JUSTICE PANGANIBAN:**

Later, I am asking about doctrines. Since you are not invoking the doctrine of double jeopardy you are resting your case win or lose, sink or sail on the application of 8,117?

**ATTY. FORTUN:**

On the constitutional right of the accused under Section 16 of Article 3 which is speedy disposition of cases which implemented 8,817, that is our arguments in this bar.

**JUSTICE PANGANIBAN:**

Are you not resting on 8,117?

**ATTY. FORTUN:**

That and the constitutional provision, Your Honor.

**JUSTICE PANGANIBAN:**

So, you are resting on 8,117?

**ATTY. FORTUN:**

Not exclusive, Your Honor.

**JUSTICE PANGANIBAN:**

And the Constitution?

**ATTY. FORTUN:**

The Constitution which gave life to 8,117.

**JUSTICE PANGANIBAN:**

To speedy disposition?

**ATTY. FORTUN:**

Yes, Your Honor.

**JUSTICE PANGANIBAN:**

Can a Court, let us see your theory then – your theory rest on two provisions: first, the Rules of Court 8,117 and Second, the Constitution on speedy disposition?

**ATTY. FORTUN:**

Yes, Your Honor.[39]

Second. The respondent's answers to the questions of Madame Justice Josefina Salonga during the hearing in the CA where he admitted, through counsel, that he gave no express conformity to the dismissal of the cases by Judge

Agnir, Jr., were in relation to Section 8 of Rule 117 and not to Section 7 of Rule 117 on double jeopardy, thus:

**JUSTICE SALONGA:**

Do we get it from you that it is your stand that this is applicable to the case at bar?

**ATTY. FORTUN:**

It is my submission, that it is, Your Honor. In addition, of course, to my proposition that Mr. Lacson is covered by the rule on double jeopardy as well, because he had already been arraigned before the Sandiganbayan prior to the case being remanded to the RTC.

**JUSTICE SALONGA:**

You are referring to those cases which were dismissed by the RTC of Quezon City.

**ATTY. FORTUN:**

Yes, Your Honor.

**JUSTICE SALONGA:**

And it is your stand that the dismissal made by the Court was provisional in nature?

**ATTY. FORTUN:**

It was in that the accused did not ask for it. What they wanted at the onset was simply a judicial determination of probable cause for warrants of arrest issued. Then Judge Agnir, [Jr.] upon the presentation by the parties of their witnesses, particularly those who had withdrawn their affidavits, made one further conclusion that not only was this case lacking in probable cause for purposes of the issuance of an arrest warrant but also it did not justify proceeding to trial.

**JUSTICE SALONGA:**

And it is expressly provided under Section 8 that a case shall not be provisionally dismissed except [if] it is with the express conformity of the accused.

**ATTY. FORTUN:**

That is correct, Your Honor.

**JUSTICE SALONGA:**

And with notice to the offended party.

**ATTY. FORTUN:**

That is correct, Your Honor.

**JUSTICE SALONGA:**

Was there an express conformity on the part of the accused?

**ATTY. FORTUN:**

There was none, Your Honor. We were not asked to sign any order, or any statement which would normally be required by the Court on pre-trial or on other matters, including other provisional dismissal. My very limited practice in criminal courts, Your Honor, had taught me that a judge must be very careful on this matter of provisional dismissal. In fact, they ask the accused to come forward, and the judge himself or herself explains the implications of a provisional dismissal.[40]

The respondent, through counsel, even admitted that despite his plea for equitable relief in his motion for a judicial determination of probable cause in the RTC, he did not agree to a provisional dismissal of the cases. The respondent insisted that the only relief he prayed for before Judge Agnir, Jr. was that warrants for his arrest be withheld pending a finding of probable cause. He asserted that the judge did not even require him to agree to a provisional dismissal of the cases:

**JUSTICE ROSARIO:**

You were present during the proceedings?

**ATTY. FORTUN:**

Yes, Your Honor.

**JUSTICE ROSARIO:**

You represented the petitioner in this case?

**ATTY. FORTUN:**

That is correct, Your Honor. And there was nothing of that sort which the good Judge Agnir, [Jr.] who is most knowledgeable in criminal law, had done in respect of provisional dismissal or the matter of Mr. Lacson agreeing to the provisional dismissal of the case.

**JUSTICE GUERRERO:**

Now, you filed a motion, the other accused then filed a motion for a judicial determination of probable cause?

**ATTY. FORTUN:**

Yes, Your Honor.

**JUSTICE GUERRERO:**

Did you make any alternative prayer in your motion that if there is no probable cause what should the Court do?

**ATTY. FORTUN:**

That the arrest warrants only be withheld. That was the only prayer that we asked. In fact, I have a copy of that particular motion, and if I may read my prayer before the Court, it said: "Wherefore, it is respectfully prayed that (1) a judicial determination of probable cause pursuant to Section 2, Article III of the Constitution be conducted, and for this purpose, an order be issued directing the prosecution to present private complainants and their witnesses at the scheduled hearing for that purpose; and (2) the warrants for the arrest of the accused be withheld, or, if issued, recalled in the meantime until resolution of this incident."

**JUSTICE GUERRERO:**

There is no general prayer for any further relief?

**ATTY. FORTUN:**

There is but it simply says other equitable reliefs are prayed for.

**JUSTICE GUERRERO:**

Don't you surmise Judge Agnir, [Jr.] now a member of this Court, precisely addressed your prayer for just and equitable relief to dismiss the case because what would be the net effect of a situation where there is no warrant of arrest being issued without dismissing the case?

**ATTY. FORTUN:**

Yes, Your Honor. I will not second say (sic) yes the Good Justice, but what is plain is we did not agree to the provisional dismissal, neither were we asked to sign any assent to the provisional dismissal.

**JUSTICE GUERRERO:**

If you did not agree to the provisional dismissal, did you not file any motion for reconsideration of the order of Judge Agnir, [Jr.] that the case should be dismissed?

**ATTY. FORTUN:**

I did not, Your Honor, because I knew fully well at that time that my client had already been arraigned, and the arraignment was valid as far as I was concerned. So, the dismissal, Your Honor, by Judge Agnir operated to benefit me, and therefore I did not take any further step in addition to rocking the boat or clarifying the matter further because it probably could prejudice the interest of my client.

**JUSTICE GUERRERO:**

Continue.[41]

In his memorandum, in lieu of the oral argument filed with the Court of Appeals, the respondent declared in no uncertain terms that:

Soon thereafter, the SC in early 1999 rendered a decision declaring the Sandiganbayan without jurisdiction over the cases. The records were remanded to the QC RTC. Upon raffle, the case was assigned to Branch 91. Petitioner and the others promptly filed a motion for judicial determination of probable cause (Annex B). He asked that warrants for his arrest not be issued. He did not move for the dismissal of the Informations, contrary to respondent OSG's claim.[42]

Section 4, Rule 129 of the Revised Rules of Court reads:

Sec. 4. Judicial admissions. – An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A judicial admission is a formal statement made either by a party or his or her attorney, in the course of judicial proceeding which removes an admitted fact from the field of controversy. It is a voluntary concession of fact by a party or a party's attorney during such judicial proceedings, including admissions in pleadings made by a party.[43] It may occur at any point during the litigation process. An admission in open court is a judicial

admission.[44] A judicial admission binds the client even if made by his counsel.[45] As declared by this Court:

... [I]n fact, “judicial admissions are frequently those of counsel or of attorney of record, who is, for the purpose of the trial, the agent of his client. When such admissions are made ... for the purpose of dispensing with proof of some fact, ... they bind the client, whether made during, or even after the trial.”[46]

When the respondent admitted that he did not move for the dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 in his motion for a judicial determination of probable cause, and that he did not give his express consent to the provisional dismissal of the said cases, he in fact admitted that one of the essential requisites of Section 8, Rule 117 was absent.

The respondent’s contention that his admissions made in his pleadings and during the hearing in the CA cannot be used in the present case as they were made in the course of a different proceeding does not hold water. It should be borne in mind that the proceedings before the Court was by way of an appeal under Rule 45 of the Rules of Court, as amended, from the proceedings in the CA; as such, the present recourse is but a mere continuation of the proceedings in the appellate court. This is not a new trial, but a review of proceedings which commenced from the trial court, which later passed through the CA. The respondent is bound by the judicial admissions he made in the CA, and such admissions so hold him in the proceedings before this Court. As categorically stated in *Habecker v. Clark Equipment Company*: [47]

... [J]udicial admissions on issues of fact, including those made by counsel on behalf of a client during a trial, are binding “for the purpose of the case ... including appeals.”

While it may be true that the trial court may provisionally dismiss a criminal case if it finds no probable cause, absent the express consent of the accused to such provisional dismissal, the latter cannot thereafter invoke Section 8 to bar a revival thereof. Neither may the accused do so simply because the public prosecutor did not object to a motion of the accused for a judicial determination of probable cause or file a motion for the reconsideration of the order of dismissal of the case. Even a cursory reading of the respondent’s motion for a judicial determination of probable cause will show that it contained no allegation that there was no probable cause for the issuance of a warrant for the respondent’s arrest as a prayer for the dismissal of the cases. The respondent was only asking the court to determine whether or not there was probable cause for the issuance of a warrant for his arrest and in the meantime, to hold in abeyance the issuance of the said warrant. Case law has it that a prayer for equitable relief is of no avail, unless the petition states facts which will authorize the court to grant such relief.[48] A court cannot set itself in motion, nor has it power to decide questions except as presented by the parties in their pleadings. Anything that is resolved or decided beyond them is *coram non iudice* and void.[49]

Third. There is no need for the Court to remand the instant case to the trial court to enable the respondent to adduce post facto evidence that the requisite notices under Section 8 had been complied with by Judge Agnir, Jr. The Court has thoroughly examined the voluminous records from the Sandiganbayan and the RTC[50] and found no proof that the requisite notices were even served on all the heirs of the victims. The respondent himself admitted that, as held by this Court, in its May 28, 2002 Resolution, “Judge Agnir, Jr. could not have complied with the mandate under Section 8 because said rule had yet to exist.”[51]

One final matter. The records show that Criminal Cases Nos. 01-101102 to 01-101112 were assigned, through the customary raffle of cases, to Branch 81 of the RTC of Quezon City, the same branch which dismissed Criminal Cases Nos. 99-81679 to 99-81689.[52] In the April 1, 2003 Resolution of the Court, the Presiding Judge of Branch 81 of the RTC of Quezon City was directed to try and decide Criminal Cases Nos. 01-101102 to 01-101112 with reasonable dispatch. The Court notes, however, that in Administrative Order No. 104-96, it designated six branches of the RTC of Quezon City[53] as special courts, exclusively to try and decide heinous

crimes under Rep. Act No. 7659. Since the accused in the said cases are charged with murder, which under Rep. Act No. 7659, is classified as a heinous crime, the above cases should be consolidated and re-raffled by the Executive Judge of the RTC of Quezon City to a branch thereof designated as a special court, exclusively to try and decide heinous crimes.

IN LIGHT OF ALL THE FOREGOING, respondent Panfilo M. Lacson's Omnibus Motion and Motion to Set for Oral Arguments are DENIED. The respondent's Motion for Reconsideration and its Supplement are DENIED WITH FINALITY. The Executive Judge of the Regional Trial Court of Quezon City is hereby DIRECTED to CONSOLIDATE Criminal Cases Nos. 01-101102 to 01-101112 and to RE-RAFFLE the same with dispatch to one of the branches of the Regional Trial Court of Quezon City designated as a special court, exclusively to try and decide heinous crimes.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Panganiban, Quisumbing, Austria-Martinez, Carpio-Morales, and Azcuna, JJ., concur.

Puno, J., maintains his dissent.

Vitug, J., maintains his dissent and reiterate his opinion on the Court's resolution of 28 May 2002.

Ynares-Santiago, J., see separate dissenting opinion.

Sandoval-Gutierrez, J., see dissenting opinion.

Carpio, J., no part.

Corona, J., on leave.

Tinga, J., no part.

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[1] Rollo, Vol. III, pp. 1563-1570.

[2] Id. at 1391-1491.

[3] Id. at 1513-1529.

[4] Id. at 1493.

[5] Rules on Who Shall Resolve Motions for Reconsideration in Cases Assigned to the Divisions of the Court, effective April 1, 2000.

[6] Rollo, Vol. II, p. 1179.

[7] Rollo, Vol. III, p. 1496.

[8] Id. at 1501.

[9] February 18, 2002 should read February 19, 2002.

[10] Id. at 1500-1501.

[11] Limpin, Jr. v. Intermediate Appellate Court, 161 SCRA 83 (1988).

[12] Rollo, Vol. II, p. 1342.

[13] *Stovall v. Denno*, 18 L.Ed.2d. 1199 (1967).

[14] *United States Fidelity & Guarantee Company v. United States*, 52 L.Ed. 804 (1908).

[15] *Great Northern Railway Company v. Sunburst Oil & Refining Company*, 77 L.Ed. 360 (1932).

[16] Rule 144, Rules of Court, as amended:

These rules shall take effect on January 1, 1964. They shall govern all cases brought after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply.

[17] *Age-Herald Publishing Co. v. Huddleston*, 92 So. 193 (1921).

[18] *Pilipinas Kao, Inc. v. Court of Appeals*, 372 SCRA 548 (2001).

**[19] 351 SCRA 294 (2001).**

[20] *Id.* at 304.

[21] *Id.*

[22] November 30, 1999 should read November 30, 2000.

[23] Resolution dated April 1, 2003, pp. 25-26; Rollo, Vol. II, pp. 1343-1344.

[24] *Supra*.

[25] Rollo, Vol. III, p. 1448.

[26] *Tan v. Court of Appeals*, G.R. No. 136368, January 16, 2002.

[27] SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[28] *U.S. v. Panczko*, 367 F. 2d. 737 (1966).

[29] In its April 29, 2003 Resolution, the respondent's allusion of loud whispers caused by a suspicion that this Court or any member of this Court had been manipulated by politics in this government was rejected by the Court, thus:

"The respondent's allusion of loud whispers caused by a suspicion that this Court or any member of the Court had been manipulated by politics in this government when it resolved to set aside its 28 May 2002 Resolution is downright irresponsible. Not too long ago, a distinguished member of the Court said:

Those who wear the black robes are enrolled in a noble mission; become different persons; forfeit their past activities, friends and even relatives; and devote full time, attention and effort to the rather reclusive and exclusive world of decision-making....

Quoting Rufus Choate, in part, a judge or justice in administering justice "shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign." All members of the Court acted on and resolved petitioners' motion for reconsideration as well as respondent's motion to recuse Justice Callejo, Sr. in light of their respective study of

the records and the relevant laws and rules after due deliberation.... (Rollo, Vol. III, p. 1499).

[30] *Lassite v. Department of Social Services*, 68 L.Ed.2d. 640 (1981).

[31] Entitled and docketed as *Lacson v. Department of Justice*, Civil Case No. 01-100933 for prohibition with a prayer for a temporary restraining order. (CA Rollo, p. 29).

[32] There were 27 accused in Criminal Cases Nos. Q-99-81679 to Q-99-81689. Except for Inspector Manuel Alvarez, the said accused were also charged in Criminal Cases Nos. 01-101102 to 01-101112. Only the respondent filed his petition in said case.

[33] SEC. 7. Former conviction or acquittal; double jeopardy. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) the greater offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or

(c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in Section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense.

[34] CA Rollo, pp. 8-9. (Underscoring supplied).

[35] *Id.* at 110.

[36] This should read “Justice Panganiban.”

[37] This should read “Atty. Fortun.”

[38] This should read “Justice Panganiban.”

[39] TSN, 19 February 2002, pp. 220-225. (Underscoring supplied).

[40] TSN (CA Rollo), 31 July 2001, pp. 12-14. (Underscoring supplied).

[41] *Ibid.*, pp. 15-18. (Emphasis ours).

[42] Memorandum of Petitioner; CA Rollo, p. 378.

[43] *Am Jur*, Evidence, §770.

[44] *Ibid.* §771.

[45] Glick v. White Motor Company, 458 F.2d. 1287 (1972).

[46] People v. Hernandez, 260 SCRA 25 (1996), citing 31 C.J.S. 537.

[47] 797 F.Supp. 381 (1992), citing Glick v. White Motor Co., supra.

[48] Branz v. Hylton, 265 N.W. 16 (1936).

[49] 15 Ruling Case Law, 854 and 328.

[50] The records from the Sandiganbayan and the RTC which were elevated to this Court consisted of 11 volumes plus 11 additional folders per Letter dated April 26, 2002.

[51] Motion for Reconsideration, p. 33; Rollo, Vol. III, p. 1423; Consolidated Reply, p. 28.

[52] Rollo, Vol. I, p. 465.

[53] Branches 76, 86, 95, 102, 103 and 219.

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