

**COMMUNITY RURAL BANK OF GUIMBA (N. E.), INC., REPRESENTED
BY OLGA M. SAMSON, COMPLAINANT, VS. JUDGE TOMAS B.
TALAVERA, REGIONAL TRIAL COURT (BRANCH 28), CABANATUAN
CITY, NUEVA E...**

A.M. NO. RTJ-05-1909. April 06, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Constitution expects judges to be embodiments of competence, integrity, probity and independence. They must personify four ins; namely, integrity, independence, industry and intelligence.[1] Their judgments must be characterized by excellence, their conduct by ethics, and their outlook by eternity. They are not common individuals whose gross errors "men forgive and time forgets."

The Case and the Facts

In a Complaint-Affidavit dated June 24, 2003, the Community Rural Bank of Guimba (N. E.), Inc. -- through its chief operating officer, Olga M. Samson -- charged Judge Tomas B. Talavera of the Regional Trial Court (Branch 28) of Cabanatuan City, Nueva Ecija, with (1) serious misconduct and/or gross inefficiency and (2) violation of Rules 1.01,[2] 3.01[3] and 3.02[4] of the Code of Judicial Conduct. The Office of the Court Administrator (OCA) summarized the factual antecedents as follows:

"In September 1997, the Bank lodged a complaint with the City Prosecutor's Office of Cabanatuan charging several persons (the accused, for brevity) with the offense of Estafa in relation to P.D. Nos. 818 and 1689. After a preliminary investigation, the Investigating Fiscal recommended the filing --of six (6) Informations for Estafa against the accused. These were docketed as Criminal Case Nos. 8760 to 8765 and were raffled to Branches 25, 26, 28, and 86 of RTC, Cabanatuan City. Respondent was the presiding judge of Branch 28 to whom Criminal Case Nos. 8761 and 8763 were raffled.

"On 28 December 1998, the accused appealed the findings of the Investigating Fiscal to the Department of Justice (DOJ, for brevity). On 19 November 1999, the DOJ denied the petition of the accused. Then, the accused filed a Motion for Reconsideration, which was denied by the DOJ through a resolution, dated 15 August 2000. Hence, respondent issued a Warrant of Arrest fixing no bail against the accused.

"On 20 November 2000, the accused filed a Motion for Reinvestigation and to Lift the Issuance of Warrant of Arrest (Motion for Reinvestigation, for brevity). However, neither the Bank nor its counsel was furnished a copy of said Motion. There was also no hearing on the said motion to afford the Bank an opportunity to oppose the same.

"On 4 December 2000, respondent granted the Motion for Reinvestigation without any hearing thereon. Thus, a reinvestigation proceeding was conducted by Assistant Provincial Prosecutor Virgilio Caballero. Again, the Bank was not notified of said proceedings.

"Assistant Provincial Prosecutor Caballero, in his Joint Resolution dated 28 December 2000, reversed the earlier findings of the previous Investigating Fiscal. Thus, on the same day, a Motion to Dismiss was filed by Assistant Provincial Prosecutor Caballero. Neither the bank nor its counsel was notified about the said Motion and no hearing thereon was held to afford the Bank an opportunity to oppose the same.

"Respondent granted the Motion to Dismiss and ordered the release of the accused on 29 December 2000.

"On 11 January 2001, the Bank, arguing that it had been deprived of due process, filed a Motion for Reconsideration with Opposition/Comment to the Motion to Dismiss and Omnibus Motion for the Reinstatement of the Criminal Information and for the Recall of Order for Release.

"Respondent denied the afore-mentioned Motion of the Bank for lack of merit on 23 March 2001. Thus, the Bank filed a Petition for Review under Rule 65 of the Revised Rules of Court with the Court of Appeals.

"In view of the foregoing, Ms. Samson argued that respondent transgressed Sections 2, 5 and 6 of Rule 15 of the Revised Rules of Court, when he granted the Motion for Reinvestigation of the accused and Assistant Provincial Prosecutor Caballero's Motion to Dismiss without notice and hearing in favor of the Bank or its counsel. Furthermore, the granting by respondent of the Motion to Dismiss based solely on the Resolution issued by Assistant Provincial Prosecutor Caballero, without making his own independent findings of the merits of the case, is repugnant to the principle laid down in *Crespo vs. Mogul* (151 SCRA 462 [30 June 1987]) which held that once a complaint or information is filed in court any disposition or the conviction or acquittal of the accused rests in the sound discretion of the court.

"2. COMMENT/OPPOSITION WITH MOTION TO DISMISS dated 11 August 2003 of Respondent Judge Tomas B. Talavera where he refutes the foregoing Complaint-Affidavit as follows:

"There was no need to set the Motion for Reinvestigation for hearing because the Office of the Provincial Prosecutor - who has direct control and supervision of all criminal cases - was furnished a copy of said motion. Furthermore, it should be noted that, in the Motion for Reinvestigation filed before the court, the Office of the Provincial Prosecutor through the Assistant Provincial Prosecutor signified his intention not to object to the Motion for Reinvestigation as can be seen from his handwritten note and signature appearing on said motion. Hence, setting the same for hearing would be an exercise in futility and it could just delay the immediate disposition of the case.

"The Office of the Provincial Prosecutor, after the reinvestigation, issued a Joint Resolution dated 28 December 2000 through Assistant Provincial Prosecutor Virgilio Caballero recommending the dismissal of the criminal case. On the basis of said Joint Resolution, a Motion to Dismiss was filed by Assistant Provincial Prosecutor Caballero, which was granted by respondent on 29 December 2003.

"The Motion to Dismiss was not set anymore for hearing because it was filed by the public prosecutor who conducted the reinvestigation. Since the Motion to Dismiss was filed by prosecutor and the same was not prejudicial to the adverse party (the accused), it is just proper for the court to treat the said motion as non-litigious.

"The private prosecutor filed a petition for certiorari before the Court of Appeals seeking to amend and set aside the Order dated 23 March 2003 of Respondent Judge which denied the Motion for Reconsideration of the private complainant. The said petition is still pending before the Court of Appeals. The grounds used by the private complainant in her petition for certiorari are the same grounds in the administrative complaint. Hence, the administrative complaint filed by the private complainant is a violation of the principle on sub judice.

"3. REPLY dated 15 September 2003 of the Bank through its legal counsel stating the following arguments:

"The reasoning of respondent in allowing the Motion for Reinvestigation without notice to private counsel and hearing is erroneous. The said motion is litigious. Therefore, sound judicial discretion should have prompted

the respondent to treat said motion as a mere scrap of paper for violating the general rules on motions under Sections 2, 5 and 6 of Rule 15 of the Rules of Court and in view of the principles enunciated in *Brizuela vs. Judge Mendiola* (A.M. No. RTJ-00-1560 dated 5 July 2000) and *Bajet vs. Judge Areola* (A.M. No. RTJ-01-1615 dated 19 June 2001). In *Brizuela* and *Bajet*, the Supreme Court held that failure to serve notice on the adverse party rendered a litigious motion a mere scrap of paper.

"Furthermore, the rule on sub judice was not violated by complainant. The cause of action and reliefs prayed for in the instant administrative complaint are different from the petition filed by the Bank before the Court of Appeals. The petition filed before the Court of Appeals was filed on the ground of "grave abuse of discretion amounting to lack of jurisdiction, there being no other plain, speedy and adequate remedy in the ordinary course of law, seeking to annul and set aside" respondent's Order dated 23 March 2001 denying complainant Bank's Motion for Reconsideration of an earlier Order dated 29 December 2000 granting Assistant Provincial Prosecutor Caballero's Motion to Dismiss. On the other hand, the administrative complaint filed by the Bank aims to subject respondent to the appropriate administrative sanctions." [5]

In a Resolution dated October 20, 2004, [6] this Court resolved to re-docket the Complaint as a regular administrative matter.

Evaluation and Recommendation of the OCA

The OCA opined that by dismissing the criminal case without giving complainant the opportunity to object to the Motion for Reinvestigation and Motion to Dismiss, respondent showed gross ignorance of the law, for which he should be sanctioned. The OCA added that the presence of the offended party was required in the hearing of a motion to dismiss as much as in the arraignment. The dismissal of the criminal cases covered the litigation's civil aspect (recovery of damages by the offended party), which was deemed included in the Information.

Pursuant to Rule 140 of the Rules of Court, the OCA recommended that respondent judge be fined in the amount of P21,000.

On the other hand, the OCA recommended that the charge of gross misconduct be dismissed for lack of substantial evidence. It found no clear proof of malice or wrongful intent on the part of respondent.

The Court's Ruling

We agree with the findings and recommendations of the OCA.

Administrative Liability

Courts exist to dispense and promote justice. Judges are the visible representations of law and justice. [7] One of their principal duties is to have an adequate grasp of the Constitution, the law and jurisprudence. Indeed, they must be the embodiments of competence, integrity and independence. [8] They owe it to the dignity of the court over which they preside, to the public who depend on them, and to the legal profession to which they belong, to know the very law they are supposed to interpret and apply. [9] Party litigants will have great faith in the administration of justice only if judges can demonstrate their grasp of legal principles. [10]

In the present case, the gross ignorance of respondent judge and his notorious violation of simple legal precepts were clearly shown by his issuance of the Orders dated December 4, 2000 granting the Motion for Reinvestigation of the accused and December 29, 2000 granting the prosecutor's Motion to Dismiss.

First, respondent should not have entertained the Motion for Reinvestigation filed by the accused. The former was fully aware that the latter had appealed the unfavorable ruling of the investigating prosecutor to the Department of Justice (DOJ). Respondent judge must have in fact taken that appeal into consideration when he issued a warrant of arrest against all the accused only on September 19, 2000, [11] after Justice Secretary Serafin R. Cuevas had

denied their Petition for Review and affirmed the presence of prima facie evidence against them.[12] Subsequently, on August 15, 2000, the secretary also denied with finality the Motion for Reconsideration filed by the accused.[13]

Inasmuch as the Resolution of the provincial prosecutor has been affirmed by the secretary of justice, the existence of probable cause to hold the accused for trial may be deemed to be the finding of the secretary himself, not merely of the prosecutor who had first investigated the case.[14] Therefore, what the prosecutor reviewed and overruled in the reinvestigation was not the actuation and resolution of his predecessor, but of the secretary of justice no less.[15]

The justice secretary's superior authority in the prosecution of offenses was elucidated upon by this Court in *Ledesma v. Court of Appeals*,[16] which we quote:

"Section 39, Chapter 8, Book IV in relation to Sections 5, 8, and 9, Chapter 2, Title III of the [Revised Administrative] Code gives the secretary of justice supervision and control over the Office of the Chief Prosecutor and the Provincial and City Prosecution Offices. The scope of his power of supervision and control is delineated in Section 38, paragraph 1, Chapter 7, Book IV of the Code:

'(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; x x x'

x x x x x x x x

"Supervision' and 'control' of a department head over his subordinates have been defined in administrative law as follows:

'In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or 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.'

"Review as an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by an administrative agency should be corrected by higher administrative authorities, and not directly by courts. x x x"

The actions of prosecutors are not unlimited; they are subject to review by the secretary of justice who may affirm, nullify, reverse or modify their actions or opinions.[17] Consequently the secretary may direct them to file either a motion to dismiss the case or an information against the accused.[18]

In short, the secretary of justice, who has the power of supervision and control over prosecuting officers, is the ultimate authority who decides which of the conflicting theories of the complainants and the respondents should be believed.[19] The provincial or city prosecutor has neither the personality nor the legal authority to review or overrule the decision of the secretary.[20] This principle is elementary.

Consistent with this administrative superior-subordinate relationship between them, Section 7 of Department Order No. 223[21] (the rules governing appeals from resolutions in preliminary investigations or reinvestigations) provides:

Sec. 7. Motion for Reinvestigation. - At any time after the appeal has been perfected and before the resolution

thereof, the appellant may file a motion for reinvestigation on the ground that new and material evidence has been discovered which appellant could not with reasonable diligence have discovered during the preliminary investigation and which if produced and admitted would probably change the resolution.

From the above-quoted provision, a motion for reinvestigation on the ground of newly discovered evidence must be filed before the justice secretary rules on an appeal from a resolution in a preliminary investigation.

In the present case, the accused filed their Motion for Reinvestigation on November 29, 2000,[22] about three months after the August 15, 2000 Resolution of the secretary denying with finality their Motion for Reconsideration of the denial of their Petition for Review. Clearly, therefore, it was grossly erroneous for respondent judge to order the reinvestigation of the case by the prosecutor. This action enabled the latter to reprobate and reverse the secretary's Resolution. In granting the Motion for Reinvestigation, respondent effectively demolished the DOJ's power of control and supervision over prosecutors.

Furthermore, the judge perfunctorily granted the Motion for Reinvestigation on the basis of an alleged newly discovered evidence -- a one-page Affidavit executed by Ms Gloria Sacramento, one of the co-accused in the criminal case. The Affidavit,[23] dated October 29, 1997, was clearly not newly discovered; it was already known to the accused even during the preliminary investigation. There was no explanation whatsoever as to why this piece of evidence was never presented during the preliminary investigation. Nonetheless, respondent hastily granted the Motion.

Considering that a prima facie case had been found to exist against the accused during the preliminary investigation -- a fact affirmed by the justice secretary -- respondent judge should have exercised great restraint in granting a reinvestigation.[24]

It must be stressed here that a preliminary investigation is essentially prefatory and inquisitorial.[25] It is not a trial of the case on the merits and has no purpose except to determine whether a crime has been committed, and whether there is probable cause to believe that the accused is guilty of that crime.[26] A preliminary investigation is not the occasion for a full and exhaustive display of the parties' evidence, which needs to be presented only to engender a well-grounded belief that an offense has been committed, and that the accused is probably guilty thereof.[27]

Second, in granting the Motion to Dismiss, respondent relied solely on the Resolution of the prosecutor who had conducted the reinvestigation and recommended the dismissal of the case for alleged insufficiency of evidence. The December 29, 2000 Order[28] granting the Motion to Dismiss reads in full as follows:

"Finding the Motion to Dismiss in these cases to be meritorious, the same is hereby granted, and Fernando del Rosario and Flordeliza del Rosario, both accused in the above-entitled cases are hereby ordered released unless they are being detained for some other lawful cause.

"Cabanatuan City, December 29, 2000."

This perfunctory Order does not demonstrate an independent evaluation or assessment of the evidence (or the lack thereof) against the accused. In other words, the dismissal of the case was not shown to be based upon the judge's own individual conviction that there was no viable case against them.

This Court also observes that respondent acted with undue haste when he granted the Motion on December 29, 2000,[29] only a day after the reinvestigation was concluded on December 28, 2000.[30] Coupled with the absence of the required evaluation in the Resolution granting the dismissal of the case, this hasty action leads to the indubitable conclusion that the judge did not personally evaluate the parties' evidence before acting on the Motion.

Settled is the legal doctrine that the discretion to accede to a Motion to Dismiss filed by the prosecutor rests solely with the court.[31] Mere approval of the position taken by the prosecution is not equivalent to the discretion required in cases like this.[32] The trial judge must be convinced that there was indeed no sufficient evidence against the accused. Such a conclusion can be arrived at only after a thorough assessment of the prosecution evidence. For a valid and proper exercise of judicial discretion, accepting the prosecution's word that the evidence is insufficient is not enough;[33] strictly required of the order disposing of the motion is the trial judge's own evaluation of such evidence.[34] Once a complaint or an information is filed in court, the judge -- not the prosecutor -- assumes full control of the controversy.[35] Thus, a grant of the motion to dismiss is equivalent to a disposition of the case itself,[36] a subject clearly within the court's exclusive jurisdiction and competence.[37]

Furthermore, when respondent judge issued the warrants of arrest without bail against all the accused, it is presumed that he had studied the Information and the Resolution of the prosecutor and agreed with the latter's findings of probable cause.[38] Consequently, the grant of the Motion for Reinvestigation and of the Motion to Dismiss for alleged insufficiency of evidence posed a serious contradiction of the earlier finding of probable cause.

Third, respondent granted the Motions despite the obvious lack of notice to complainant (the private offended party in the criminal case) and lack of hearing. This lapse effectively deprived it of its day in court.

The Rules of Court require that, with the exception of motions that the court may act upon without prejudicing the rights of the adverse party, every written motion should be set for hearing by the movant. Sections 4, 5 and 6 of Rule 15 of the Rules of Court explicitly require that notices be sent at least three days before the hearing and directed at the parties concerned; and that they state the time and place of hearing of the motion, with proper proof of notice thereof. Without such proof, the motion is considered pro forma; thus, the court cannot act upon it.[39]

The purpose of the notice is to enable the adverse party to appear for its own protection and to contest the motion.[40] Elementary due process mandates that the other party be notified of the adverse action of the opposing party,[41] so as to avoid a capricious change of mind and to ensure impartiality of the trial.[42] Here, the Motions for Reinvestigation and to Dismiss were fatally defective, as neither contained any proper notice of hearing. Respondent thus grossly erred in taking cognizance of these Motions.

In criminal proceedings, the word "party" is held to mean not only the government and the accused, but also other persons who may be affected by the orders issued and/or judgment rendered therein.[43]

Undoubtedly, complainant had an interest in the maintenance of the criminal prosecution.[44] Its right to intervene therein was practically beyond question, as it neither instituted a separate civil action nor reserved or waived the right to do so.[45] Thus, as the party injured by the crime, it had the right to be heard on a motion that was derogatory to its interest in the civil aspect of the case. Due process[46] necessitates that it be afforded this opportunity, especially because of a conflict between the positions of the public prosecutor and of the offended party.

Respondent judge does not deny that no notice was given to complainant. Neither was a hearing conducted before the issuance of the subject Orders. By such failure of notice and hearing, he effectively deprived complainant of the opportunity to appear and to oppose the said Motions. That the offended party, not only the accused, must be accorded due process was explained by the Court in *Dimatulac v. Villon*, which ruled thus:

"x x x Although the determination of a criminal case before a judge lies within his exclusive jurisdiction and competence, his discretion is not unfettered, but rather must be exercised within reasonable confines. The judge's action must not impair the substantial rights of the accused, nor the right of the State and offended party to due process of law.

"Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and the offended party, on the other."
[47]

All told, respondent showed his lack of understanding, not only of the basic and established superior-subordinate relationship between the secretary of justice and the provincial prosecutors, but also of the functions and duties of the trial court in "the proper scheme of things" in our criminal justice system. The judge similarly failed to attach importance to the standard and fundamental procedure mandated by the Rules of Court and the rudiments of due process. His actions manifested a marked deficiency in his knowledge of the law. Where, as in this case, the legal principle involved is basic, simple and elementary, lack of conversance therewith constitutes gross ignorance of the law.[48]

Judges are expected to have more than just a modicum acquaintance with the statutes and procedural rules.[49] The Code of Judicial Ethics requires them to be embodiments of, among other desirable characteristics, judicial competence.[50] They are not common individuals whose gross errors "men forgive and time forgets." [51]

The OCA recommended the penalty of a fine in the amount of P21,000 for respondent judge's gross ignorance of the law, which is classified by Rule 140 of the Rules of Court as a serious charge. As to the complaint of serious misconduct, we also adopt the findings of the OCA that no fraud, malice or wrongful intent was imputed, or proved by complainant; hence, respondent cannot be made liable therefor.

WHEREFORE, Judge Tomas B. Talavera is found GUILTY of gross ignorance of the law and is FINED twenty one thousand pesos. He is hereby sternly warned that a repetition of the same or similar infractions in the future shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] See Panganiban, "Judging the Judges," Kilosbayan , March 2005, pp. 13-18.

[2]"Rule 1.01. - A judge should be the embodiment of competence, integrity, and independence."

[3] "Rule 3.01. - A judge shall be faithful to the law and maintain professional competence."

[4]"Rule 3.02. - In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism."

[5] OCA Report, pp. 1-5; rollo, pp. 156-160.

[6]Rollo, p. 164.

[7] Employees of the RTC of Dagupan City v. Judge Falloran-Aliposa, 384 Phil. 168, March 9, 2000.

[8]Atty. Hilario v. Judge Concepcion, 383 Phil. 843, March 2, 2000; Gacayan v. Pamintuan, 314 SCRA 682, September 17, 1999.

[9] Estoya v. Abraham-Singson, 237 SCRA 1, September 26, 1994.

[10] *Aducayen v. Flores*, 51 SCRA 78, May 25, 1973.

[11] See Complaint-Affidavit, p. 3; rollo, p. 4.

[12] See Resolution dated November 19, 1999; *id.*, pp. 29-30.

[13] See Resolution dated August 15, 2000; *id.*, p. 31.

[14] *Noblejas v. Salas*, 67 SCRA 47, September 15, 1975.

[15] *Ibid.*

[16] 278 SCRA 656, 676-678, September 5, 1997, per Panganiban, J. (cited in *Solar Team Entertainment, Inc. v. How*, 338 SCRA 511, August 22, 2000; *Dimatulac v. Villon*, 297 SCRA 679, October 12, 1998).

[17] See also the last paragraph of Section 4 of Rule 112 of the 1985 Rules on Criminal Procedure, which recognizes the authority of the secretary of justice to reverse the resolution of the provincial or city prosecutor or chief state prosecutor. *Roberts Jr. v. Court of Appeals*, 324 Phil. 568, March 5, 1996; *Crespo v. Mogul*, 151 SCRA 462, June 30, 1987.

[18] *Ibid.*

[19] *Jalandoni v. Secretary Drilon*, 383 Phil. 855, March 2, 2000 (citing *Vda. de Jacob v. Puno*, 131 SCRA 144, July 31, 1984).

[20] The findings of the secretary of justice are not subject to judicial review, unless shown to have been made with grave abuse. *Joaquin Jr. v. Drilon*, 361 Phil. 900, January 28, 1999.

[21] Dated June 25, 1993, the Order was issued by then Secretary Franklin M. Drilon.

[22] Annex "E" of the Complaint-Affidavit; rollo, pp. 32-33.

[23] *Id.*, p. 34.

[24] See also *Edillon v. Narvios*, 99 SCRA 174, August 21, 1980, wherein the Court expressed apprehension over the trial court's grant of a Motion to Dismiss filed by a prosecutor after a reinvestigation. The Court held that allowing reinvestigation by the prosecution should be discouraged or should not be tolerated, because such a practice would generate the impression that the accused would be able to fix their case, or that it would be easier for them to manipulate and maneuver the dismissal of the case in the prosecutor's office.

[25] *Olivarez v. Sandiganbayan*, 248 SCRA 700, October 4, 1995.

[26] *Drilon v. Court of Appeals*, 258 SCRA 280, July 5, 1996.

[27] *People v. Court of Appeals*, 361 Phil. 401, January 21, 1999; *Drilon v. Court of Appeals*, *supra*; *Ledesma v. Court of Appeals*, *supra*.

[28] Rollo, p. 39.

[29] See Order dated December 29, 2000; rollo, p. 39.

[30] See the Joint Resolution dated December 28, 2000, signed by Prosecutor II Virgilio G. Caballero and approved by Provincial Prosecutor Gerardo S. de Leon; *id.*, pp. 36-38.

[31] *Dimatulac v. Villon*, *supra*; *Roberts Jr. v. Court of Appeals*, *supra*; *Republic v. Sunga*, 162 SCRA 191, June 20, 1988; *Dungog v. Court of Appeals*, 159 SCRA 145, March 25, 1988; *Crespo v. Mogul*, *supra*.

[32] Mosquera v. Panganiban, 258 SCRA 473, July 5, 1996 (citing Martinez v. Court of Appeals, 237 SCRA 575, October 13, 1994).

[33] Martinez v. Court of Appeals, supra.

[34] Venus v. Desierto, 298 SCRA 196, October 21, 1998.

[35] Solar Team Entertainment, Inc. v. How, supra.

[36] Ledesma v. Court of Appeals, supra.

[37] Solar Team Entertainment, Inc. v. How, supra; Crespo v. Mogul, supra.

[38]§2, 1987 Constitution, provides in part -

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge x x x."

[39] §6, Rule 15; Juan v. People, 379 Phil. 125, January 18, 2000; Vlasov Enterprises Corporation v. Court of Appeals, 369 Phil. 269, July 6, 1999; People v. Court of Appeals, supra.

[40]Odoño v. Judge Macaraeg, 384 Phil. 788, March 16, 2000 (citing Far Eastern Surety & Insurance Company, Inc. v. Vda. de Hernandez, 67 SCRA 256, October 3, 1975; Vlasov Enterprises Corporation v. Court of Appeals, supra).

[41] Filipino Pipe & Foundry Corp. v. NLRC, 376 Phil. 178, November 16, 1999.

[42] Fajardo v. Court of Appeals, 354 SCRA 736, March 20, 2001.

[43] Martinez v. Court of Appeals, supra (citing People v. Guido, 57 Phil. 52, August 15, 1932).

Under §14, Rule 110 of the Revised Rules on Criminal Procedure, which became effective on December 1, 2000, "any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party."(Emphasis supplied)

[44] Article 100 of the Revised Penal Code expressly declares that "every person criminally liable for a felony is also civilly liable." As a general rule, an offense causes two classes of injury -- the first is the social injury produced by the criminal act that is sought to be repaired through the imposition of the corresponding penalty; and the second is the personal injury caused the victim of the crime, an injury sought to be compensated through indemnity that is civil in nature. Pamaran, The 1985 Rules on Criminal Procedure, Annotated (1998 ed.), p. 123 (citing Ramos v. Gonong, 72 SCRA 559, August 31, 1976).

[45] §16, Rule 110. "Intervention of the offended party in criminal action. - Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense."

§1, Rule 111. "Institution of criminal and civil actions. - (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action."

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[46] See *Martinez v. Court of Appeals*, supra, in which the private offended party was considered deprived of due process, as he had not been furnished a copy of the prosecution's Motion to Dismiss.

[47] *Dimatulac v. Villon*, supra, p. 714, per Davide Jr., (later CJ).

[48] *Lu v. Siapno*, 335 SCRA 181, July 6, 2000; *Villanueva v. Judge Almazan*, 384 Phil. 776, March 16, 2000; *Cortes v. Bangalan*, 379 Phil. 251, January 19, 2000.

[49] *Domondon v. Lopez*, 383 SCRA 376, June 20, 2002; *De Vera v. Judge Dames II*, 369 Phil. 470, July 13, 1999.

[50] *Enojas Jr. v. Judge Gacott Jr.*, 379 Phil. 277, January 19, 2000; *Villanueva v. Judge Almazan*, supra.

[51] *Requierme Jr. v. Yuipco*, 346 SCRA 25, 34, November 27, 2000, per Quisumbing, J.

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